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PUBLICATIONS

OF THE

STATE HISTORICAL SOCIETY OF WISCONSIN

JOSEPH SCHAFER, SUPERINTENDENT
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COLLECTIONS, VOLUME XXIX
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PUBLICATIONS OF THE STATE HISTORICAL SOCIETY OF WISCONSIN

COLLECTIONS, VOLUME XXIX
CONSTITUTIONAL SERIES, VOLUME IV

THE ATTAINMENT OF STATEHOOD

EDITED BY
MILO M. QUAIFE
WISCONSIN HISTORICAL SOCIETY

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PREFACE

That the people of Wisconsin were determined to discard the shackles of territorial bondage was evident at least as early as the beginning of the year 1846. The long turmoil which culminated in the decisive rejection of the constitution of 1846 by the voters on April 6, 1847 did not operate to lessen this determination. The debate over ratification, set forth in the preceding volume of this series, made it abundantly clear that the voters did not desire statehood under the constitution of 1846; equally clear was it that with a convention more wisely organized than the first had been, and in the light of the popular mandate against certain features of the first constitution which the electorate had been persuaded were unduly "progressive," a document might be drafted which would meet with general acceptance.

We have seen (in Volume III) that early in 1847 the territorial legislature sought to anticipate the prospective rejection of the constitution then before the voters by making provision for a second convention should this event transpire. This project failed of enactment, however; and when in the April election the voters rejected the constitution of 1846, this action was taken with the knowledge that in all probability it meant the delaying of statehood to a date which would render impossible the much-desired participation in the presidential election of 1848.

Notwithstanding the general desire for statehood, after the election of April 6, 1847 popular attention was promptly diverted to other matters. Whether this was because of a general conviction on the part of the voters that the leaders would procure for them such a constitution as they had roughly indicated their desire to have, or whether it was due to the psychological impossibility of fixing attention longer on the subject, is not wholly clear. Whatever the reason for the loss of interest, there is no more striking change in the history of Wisconsin, perhaps, than that between the

stirring fifteen months' debate ending in April, 1847 and the calm of the ensuing year.

Thus, through the summer of 1847 the question of what move should next be made was mildly and desultorily discussed in the press. A proposal that the expense and delay of a new convention be avoided through the device of having the territorial legislature undertake the work of amending the rejected constitution for resubmission to the voters attracted some attention and elicited some favorable editorial comment. Politics was the breath of life to the editors of this period, and throughout all the discussion runs the undercurrent of maneuvering for party advantage. At length, on September 27, 1847, Governor Dodge issued a call for a special session of the legislature.[1] The occasion for the call was stated in a single sentence: "Believing that a large majority of the people of the territory of Wisconsin are in favor of an early admission into the Union as an independent state, and that such admission would greatly advance the best interest and prosperity of the people thereof."

The legislature assembled October 18 and in a ten-day session discharged the task before it. The chief difference of opinion during the session, and therefore the main subject of debate, was over the size of the new convention. This involved necessarily the difficult question of apportionment, the principal conflict of interest being between the relatively populous southern and eastern counties and the sparsely settled northern and western counties. The number finally decided upon (sixty-nine) was reached as a compromise, being satisfactory apparently to few if any members of the two houses. The act provided that an election for delegates to the convention be held on the fifth Monday in November (November 29, 1847) and the delegates thus elected should assemble at the territorial capitol on the third Wednesday of December (December 15) following.[2] One-third of the members elected to the new convention were Whigs, a proportion approximately three times as large as in the first convention. As to individuals, the voters had chosen a set of delegates almost completely new, only six members of the first convention finding a place in the second.[3]

[1] For it see *post*, 1.
[2] For the act see *post*, 4.
[3] These were Samuel W. Beall, Warren Chase, Garrett M. Fitzgerald, Stoddard Judd, Frederick S. Lovell, and Theodore Prentiss.

The general expectation that the second convention would fulfill the function merely of a committee of revision on the work of the first was, broadly speaking, fulfilled, although a superficial survey of the situation would perhaps lead to a contrary conclusion. The anticipated "short session" was prolonged to seven weeks; Professor Paxson has shown that "from preamble to signatures" the second constitution was a new draft.[4] Nevertheless, the same student of the subject points out that the changes made were "only verbal and in arrangement." The obnoxious banking article of 1846—product of the fertile brain of Edward G. Ryan—was completely revised; the much controverted principle of homestead exemption found adequate expression in the new constitution as a statement in the bill of rights; while on the subject of rights of married women, over which clause of the old constitution the discussion had waxed most piquant, a discreet silence was maintained. Much water had flowed under the bridge even in the short year since the first convention had concluded its labors. The year 1848 was one of widespread revolution; and the proposals of the "progressives" of 1846 which had seemed so radical to the Wisconsin electorate when first broached possessed little power to startle the voters of 1848. Indeed, the only determined opposition to the new constitution came from a quarter which did not regard it as radical enough. Negro suffrage, on which a separate referendum had been submitted to the voters by the first convention, had been decisively voted down in the election of April 6, 1847. It was not embodied in the second constitution, and accordingly the Waukesha *American Freeman,* organ of the abolition element in Wisconsin, opposed the new constitution as it had the older one. The *Freeman* stood alone in this opposition, however. Democratic and Republican papers, the foreign voter and the native American, alike supported the constitution. The general apathy of the electors is revealed in the fact that with a marked increase in territorial population as compared with the previous year[5] the number of votes cast in the two elections over ratification shrank from 34,350 in April, 1847 to 22,591 in March, 1848. Seventy-four per cent of the votes cast were

[4] *Wisconsin Historical Collections,* xxvi (Constitutional Series, i), 51.

[5] The population of the territory in 1840 was 30,945; in 1842, 44,478; on June 1, 1846, 155,277; in February, 1848, 210,546; and by the United States Census of 1850, 305,391. The population in April, 1847 may be assumed to have been about 180,000, and in March, 1848 about 215,000. With the same ratio of votes cast to total population in the second election as in the first, the vote on the second constitution would have been about 40,500, instead of 22,500.

in favor of ratification. On April 10 Governor Dodge issued a proclamation formally announcing the result of the election;[6] seven weeks later (May 29) Congress passed the act admitting Wisconsin to the sisterhood of states.[7]

The present volume differs from the three which have preceded it in that a far larger proportion of its contents has been taken from a single source. The second convention made tardy provision for the keeping of a record of debates. Although this record is obviously incomplete, yet it suffices to set forth with sufficient clarity in most respects the course of discussion in the convention. Three members (Messrs. Beall, Judd, and Whiton) exercised their privilege of forbidding the reporters to record their contributions to the discussion; this aside, the official record is admittedly condensed. In the present volume, therefore, it has been supplemented by such additional information, gathered from the press and elsewhere, as we have been able to supply.

The biographies of members of the convention are the work of Dr. Louise Phelps Kellogg. I desire formally to record my steadily increasing obligation to Daisy Milward, my editorial assistant, for indispensable help in preparing copy.

MILO M. QUAIFE

[6] For it see *post*, 11.
[7] For the act see *post*,

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INTRODUCTION

The foregoing preface, by the editor of the Constitutional Series in the *Collections* of this Society, was written about seven years ago. Being now happily in position to send the manuscript to press, I embrace the opportunity to add something by way of introduction to the newspaper discussion herein presented. Perhaps no constitution of an American commonwealth owed more to that influence which in legislative circles is called the "Third Estate." Dr. Quaife made discerning selections from the newspapers when he copied the editorials reprinted in this volume. Editors devoted to the public interest can make their organs tell powerfully upon the result of such a convention as framed Wisconsin's fundamental law. The reader of this study will not need to be assured that men like C. Latham Sholes, John Y. Smith, George Hyer, Sherman Booth, J. M. Gillette, J. M. Goodhue, and other Wisconsin publicists of the time are not to be overlooked in an inventory of the human forces contributing to the convention's work.

Perhaps the most striking, certainly the most radical, proposal which gained currency during the constitution-making era in Wisconsin was the suggested exclusion from the constitution of all authority for laws relating to the collecting of debts. Such laws, argued the editor of the Southport *Telegraph*, "cannot be made to subserve the ends of justice." "Do away your laws relating to debts and bankruptcy," he cried, ". . . throw away your legal standards of right and wrong in regard to matters of pecuniary dealing and obligation; let integrity of character be the sole basis of credit, and you will soon find a moral sentiment and discrimination springing up in the community, the increasing strength of which through its cultivation will furnish a better security for the honest and faithful discharge of mutual obligations and for safety in business transactions than any legal system of coercion or regulation that human wisdom can devise."

It goes without saying that the suggestion was not adopted. But in making it Sholes, the editor of the *Telegraph*, proved himself to be in the van of the democratic social thinkers of his day. Another reform idea which he voiced, and toward which he found the editors of the state generally sympathetic, was the revision and simplification of the legal code. He urged the appointment of a commission by the first state legislature to be held under the proposed constitution for the purpose of revising the code after the manner adopted by the state of New York. Mr. Sholes was an editor whose mind teemed with ideas for "humanizing" the world, and he manifested a rare freedom, freshness, and vigor in presenting them. His Democracy was functional rather than partisan, and we find him going for Free Soil in 1848, for Republicanism a few years later, and for Democracy again after the breakdown of the Liberal Republican movement. He advocated many projects that were and still are accounted impracticable, but the motive in all cases was the best good of his fellowmen. Sholes was born in Pennsylvania in 1819, of New England stock, and died in Milwaukee in 1890. He became internationally known for his invention of the typewriter. The contributions of the Southport *Telegraph* to the constitutional discussion are significant by reason of the uncompromisingly "progressive" attitude of its brilliant young "Loco-Foco" editor.

John Yates Smith, who with Horace A. Tenney edited the Madison *Argus*, was noted for his interest in and writing on economic subjects. A vigorous member of the "Hunker" faction of the Democracy, his pronouncements on hard money, credit, free trade, etc. were uttered with utmost conviction. He was possessed of both intellectual ability and humor. Horace A. Tenney, his partner, was likewise an able thinker and ready writer. It cannot be known how the articles reprinted from the *Argus* divide in their authorship between these two, but the manner of the *Argus* discussion of "Constitutional Principles" suggests the hand of John Y. Smith.

George Hyer had already a long editorial experience behind him when he assumed charge of the Watertown *Rock River Pilot* in 1846. He had worked on pioneer papers in Milwaukee and in Madison, had gained a reputation as an effective editorial writer, and one who uttered his convictions without "fear, favor, or affection." He, also, was a Democrat.

The selections from the Waukesha *Freeman* illustrate the attitude of mind of the conscientious objectors. But they have an individuality also. There was only one Sherman Booth—the stormy petrel of Wisconsin antislavery politics, the brilliant writer, and daring protagonist of the "human rights" of the least among his fellows, the despised free negroes and the slaves.

J. M. Gillette, of the Fond du Lac *Whig,* came to rank as "one of the foremost lawyers" in Wisconsin. As a Whig, he felt called upon to warn the people against "new heresies," and he was also eager to discuss constitutional principles, from a conservative point of view. James M. Goodhue, of the Lancaster *Herald,* made a minor contribution, also in the direction of conservatism, as a kind of 'prentice activity in constitutional discussion. When, two years later, he took the *Herald's* press up the Mississippi and with it began the publication of the St. Paul *Pioneer Press,* he entered on his real vocation as commonwealth leader. The other contributions, from the Potosi *Republican,* edited by Lucien B. Leach, and the Prairie du Chien *Patriot,* edited by Hiram A. Wright, are both minor ones.

One distinguished editor, General Rufus King, of the Milwaukee *Sentinel,* was a member of the convention. The proceedings and debates contain the record of his labors. But it is not amiss to point out that men like Sholes, Smith, and Hyer, from their editorial vantage ground, exerted a steady intellectual and moral pressure upon the convention, which went far to condition its work.

JOSEPH SCHAFER

Madison, January 1, 1928

PART I PROCEEDINGS OF TERRITORIAL GOVERNOR AND LEGISLATURE

HENRY DODGE, GOVERNOR OF THE TERRITORY OF WISCONSIN—A PROCLAMATION[1]

BELIEVING, That a large majority of the people of the territory of Wisconsin are in favor of an early admission into the Union as an independent state, and that such admission would greatly advance the best interest and prosperity of the people thereof:

THEREFORE, KNOW YE, That I, HENRY DODGE, Governor of the territory aforesaid, by virtue of the authority in me vested, do hereby appoint a special session of the Legislative Assembly of the said territory, to be held at the capitol in Madison, on Monday the eighteenth day of October next, at 12 o'clock, meridian; that said Assembly, when convened, may take such action thereon and adopt such other measures as in their wisdom the public good may require.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the territory to be affixed.

[L. S.] Done at Madison, the twenty-seventh day of September, A. D. 1847.

By the Governor: HENRY DODGE

JOHN CATLIN,
Secretary of Wisconsin Territory

[1]From Madison *Wisconsin Argus*, October 12, 1847.

GOVERNOR DODGE'S MESSAGE ON STATEHOOD[2]

Fellow Citizens of the Council and House of Representatives: In accordance with the laws of the territory I have deemed it my duty to convene a special session of the Legislative Assembly, to enable the representatives of the people to take such action in the early organization of a state government as will meet the wants and wishes of their constituents.

At the last census of the inhabitants of the territory her population was one hundred and fifty-five thousand; and from the increased immigration since that period her present population may now be estimated to exceed two hundred thousand.

By the official returns made to the office of the secretary of the territory of the votes given "for and against state government" it appears that a large majority of the people are in favor of a state government. The preparatory steps, it would seem, can be taken for the election of a convention to form a constitution and submitting it to the people of the territory, as well as to the Congress of the United States at their next session, in time for the admission of Wisconsin as an independent state of this Union, as the next is the commencement of a new Congress and a long session of that body. In that event the state of Wisconsin will give her electoral vote at the next presidential election in 1848.

The admission of Wisconsin as a state will promote the best interests of her people; they will have a representation in both houses of Congress; they will participate in all the advantages of a government created by themselves, founded on the equal rights of all, and when the expressed voice of the people will be the supreme law of the state. The donation of five hundred thousand acres of land, to which the future state of Wisconsin will be entitled under the provisions of an act of Congress entitled "An Act to appropriate the proceeds of the sale of the public lands, and to grant preëmption rights," approved September 4, 1841, will be greatly lessened in value before Wisconsin becomes a state, as the choice lands have already been sold, and the refuse lands will remain, from which the selection will be made, unless they are located north of the Wisconsin River.

[2] From Madison *Wisconsin Argus*, October 19, 1847.

The lands granted by Congress for schools and a university will not be available until after the admission of Wisconsin as a state. Five per centum on the net proceeds of the sales of the public lands sold at the land offices in this territory, to which the state of Wisconsin will be entitled on her admission into the Union, would have paid the expenses of the state government for the last five years.

The people of this territory have paid into the United States treasury, since the organization of the territorial government, near four million of dollars in payment for the public lands; and the amount appropriated by Congress for the improvement of harbors and roads, etc. in the territory is one hundred and sixty-seven thousand dollars. This state of things will remain as long as the territorial government exists.

The states of Illinois and Missouri were admitted members of the Union when the population of those states did not exceed one hundred and thirty thousand inhabitants. In the admission of all the western states none of them had a population equal to the present population of the territory of Wisconsin. The future state of Wisconsin will combine as many advantages as any other portion of the United States. Her great extent of territory; the fertility of her soil; the salubrity of her climate; with commercial advantages unsurpassed on our inland seas and navigable rivers; her inexhaustible mineral wealth, composed of lead, iron, and copper mines, with the most extensive pine lumber region in the United States; with an intelligent, enterprising population—may we not confidently hope that Wisconsin will be the happy abode of millions of freemen, and that her march will be onward until she fills the high destiny that awaits her.

The present Legislative Assembly having been convened for a special purpose, I have not deemed the present an appropriate occasion to make any suggestions, except in relation to the organization of state government.

Be assured, fellow citizens, you will have my cooperation in the support of all such measures as will promote the good of the people you represent.

HENRY DODGE

Executive Department
October 18, 1847

AN ACT IN RELATION TO THE FORMATION OF A STATE GOVERNMENT IN WISCONSIN, AND TO CHANGE THE TIME FOR HOLDING THE ANNUAL SESSION OF THE LEGISLATURE[3]

Be it enacted by the Council and House of Representatives of the Territory of Wisconsin:

Section 1. That on the fifth Monday of November, A. D. 1847, every white male inhabitant of the territory of Wisconsin, above the age of twenty-one years, and who shall have residence therein for six months next preceding said day, and who shall be a citizen of the United States, or shall have declared his intention to become such citizen according to the laws of the United States on the subject of naturalization, shall be authorized to vote by ballot for the number of delegates to a convention to form a constitution for the state of Wisconsin, which is hereinafter apportioned to the county in which he shall vote: *Provided*, That no person shall vote in any county for such delegates unless he shall have been a resident of that county for the period of ten days next preceding the time of offering his vote; and all legal voters resident upon Indian territory shall under the qualifications prescribed by this act have the right to vote for delegates in the counties nearest to their residence.

Section 2. Every person authorized by this act to vote for delegates to the convention herein provided for shall be eligible as a delegate to said convention for the county or district in which he resides.

Section 3. The number of delegates to be elected to said convention in the several counties of the territory shall be as follows, to wit:

In the county of Racine .....eight delegates
In the county of Milwaukee .....seven delegates
In the county of Walworth .....six delegates
In the county of Waukesha .....six delegates
In the county of Rock .....six delegates
In the county of Grant .....five delegates

[3] From *Laws of Wisconsin Territory Passed at the Special Session of the Legislative Assembly, October 27, 1847*, p. 3.

In the county of Jefferson .....four delegates
In the county of Lafayette .....three delegates
In the counties of Iowa and Richland .....three delegates
In the county of Dane .....three delegates
In the county of Dodge .....three delegates
In the county of Washington .....three delegates
In the county of Green .....two delegates
In the county of Fond du Lac .....two delegates
In the counties of Sheboygan and Manitowoc ..one delegate
In the county of Brown .....one delegate
In the county of Calumet .....one delegate
In the counties of Winnebago and Marquette...one delegate
In the counties of Portage and Sauk .....one delegate
In the counties of Crawford and Chippewa ....one delegate
In the counties of St. Croix and La Pointe.....one delegate
In the county of Columbia .....one delegate

Section 4. The votes cast for such delegates shall be taken, canvassed, certified and returned, and certificates of election made out and delivered in the same manner as is provided by law for taking, canvassing, certifying and returning votes, and making out and delivering certificates of election for members of the House of Representatives: *Provided,* That the returns of the said votes to the officers now designated by law in the several counties to receive the same shall be made on or before the first Monday succeeding the day of election herein provided for; *Provided,* further, That the clerk of the board of county supervisors or of county commissioners, as the case may be, of each county, shall make out and deliver certificates of election to such persons as may have been elected delegates in said county, and shall not in any case be required to transmit the returns of the votes of said county to any other county, except that the returns of Richland County shall be transmitted to the county of Iowa; the returns of Manitowoc County shall be transmitted to the county of Sheboygan; the returns of the county of Winnebago shall be transmitted to the county of Marquette; the returns of the county of Portage shall be transmitted to the county of Sauk; the returns of the county of Chippewa shall be transmitted to the county of Crawford, and the returns of the county of La Pointe shall be transmitted to the county of St. Croix; and the person or persons voted for for delegate or delegates, equal in number to that above apportioned to such county or district, who shall have re-

ceived the greatest number of votes, shall be declared duly elected.

Section 5. The said delegates shall assemble in the Representatives' Hall in the capitol at Madison, in the said territory, on the third Wednesday of December, A. D. 1847, at 12 o'clock, meridian, and when so assembled shall have full power and authority to form a republican constitution for the state of Wisconsin.

Section 6. The convention shall elect one of their number president, and appoint one or more secretaries, and such other officers as may be necessary to the permanent organization of their body, and shall adopt rules for the regulation of its members and officers, and have full power to enforce the same.

Section 7. Each delegate shall receive two dollars and fifty cents per day for his services in said convention, and ten cents per mile for travel going to and returning from the same. The officers of said convention shall receive such compensation as the convention shall deem proper to allow; and the compensation of the members and officers of said convention, together with the incidental expenses of the convention, shall be paid out of the territorial treasury on the certificate of the president; and the auditor is hereby authorized to receive said certificates and issue warrants on the territorial treasury therefor in such sums as the holders may desire.

Section 8. It shall be the duty of said convention to give publicity to the constitution adopted by them by providing for its publication in the newspapers published in the territory: *Provided,* That such papers will publish the same for a sum not exceeding twenty dollars per paper, and no expense shall be incurred for its publication in pamphlet form; to submit the same to a vote of the people for their approval and to provide how the votes cast upon that subject shall be taken, canvassed, and returned; and the said convention shall also have the power to submit the said constitution to the Congress of the United States, and to apply in such manner as they may deem proper for the admission of the state of Wisconsin into the Union.

Section 9. When any person shall offer to vote at any election provided for by this act and either of the judges of election shall suspect that such person does not possess the qualifications of a voter, or if his vote shall be challenged by any voter, one of the judges of election shall tender to such person an oath or affirmation in the following form: "I, A. B., do solemnly swear (or affirm as the case may be) that I have resided in this territory six months, and in this county ten days immediately preceding this election; I

am twenty-one years of age, as I verily believe; I am a citizen of the United States (or have declared my intention to become such according to the laws of Congress on the subject of naturalization) and I have not voted at this election." And if such person shall take such oath or affirmation, his vote shall be received unless it shall be proved by evidence satisfactory to a majority of the judges that he does not possess the qualifications of a voter; and if such person refuses to take said oath or affirmation, his vote shall be rejected.

Section 10. If any person shall vote at any election provided for by this act, knowing that he does not possess the qualification of a voter therein prescribed, he shall be liable to be indicted for so voting, and upon conviction thereof shall be punished by imprisonment in the county jail of the county in which he shall be convicted for a period not less than three months nor more than one year. And if any person shall take the oath or affirmation prescribed by this act relative to the qualification of voters, knowing the same to be false, he shall be deemed to be guilty of perjury, and upon conviction thereof shall be punished in the same manner as is now provided by law for the punishment of the crime of perjury.

Section 11. The qualified electors present at the place of holding any election provided for in this act shall have power to fill any vacancy (for the time being) that may exist in the board of election as now constituted by law.

Section 12. At any election held in pursuance of the provisions of this act the polls shall be opened at the several places where the last annual election was held, between the hours of eight and ten o'clock A.M., and shall be closed at five o'clock P.M., any law of this territory to the contrary notwithstanding.

Section 13. The governor shall within ten days from the passage of this act appoint in each of the counties of the territory some suitable person who is hereby authorized and required to cause the number of inhabitants in the county for which he shall have been appointed to be accurately taken, omitting in the enumeration Indians not citizens and officers and soldiers of the regular army of the United States; and every person so appointed shall have [power] to appoint as many assistants to aid him in taking the census as he may deem necessary and shall assign to each assistant a certain division of his county which shall be accurately defined either by congressional township lines or the boundaries of towns organized for town government or shall be distinctly bounded by water courses or public roads: *Provided,* That if any person so

appointed shall refuse or fail to perform the duties required by this act, it shall be the duty of the governor forthwith to appoint some other suitable person to perform the same; and he is hereby authorized, should he deem it necessary, to extend in such case the time limited by this [act] for the performance of said duties for such period as he may deem proper.

Section 14. The governor shall immediately upon making such appointments furnish to the secretary of the territory the names of all persons so appointed and their residence so far as he can ascertain the same, which the secretary shall record in the executive journal; and the secretary shall furnish to every person so appointed a certificate of such appointment and shall at the same time forward to him the necessary blank forms for carrying into effect the provisions of this act, to be prepared by the secretary, the expense of preparing which shall be paid by the territory.

Section 15. The persons appointed to take the census and their assistants shall severally take and subscribe an oath or affirmation before some person authorized by law to administer oaths, previous to entering upon the discharge of the duties imposed by this act, that they will well and truly cause to be made a just and perfect enumeration of all the persons resident within their county or division as the case may be, and a true return thereof make in pursuance of the provisions of this act according to the best of their abilities, which oath or oaths shall be returned with the census as hereinafter provided, to the secretary of the territory. Every assistant so appointed shall return to the person by whom he was appointed a just and perfect enumeration of the inhabitants of the district or division assigned to him in the form so as aforesaid to be prepared by the secretary. And the several persons appointed in pursuance of the provisions of this act to take the census in their respective counties shall by the twenty-fifth day of December next prepare duplicate copies of the enumeration of the inhabitants of their respective counties, specifying the number of inhabitants in each town in the counties under the town system of government, and in each precinct in those counties under the county system of government; and forthwith transmit one of said copies properly certified to the secretary of the territory and the other to the register of deeds of said county, or if there be no register in such county, to the register of deeds of the county to which it is attached for judicial purposes, and the said register shall preserve the same on file in his office subject to the inspection of all persons.

Section 16. If any person appointed in pursuance of the provisions of this act to take the census shall fail to complete said census and make returns thereof by the time limited by this act, he shall not be entitled to receive any compensation therefor; and every person so appointed who shall accept said appointment and every assistant who shall be appointed and shall accept such appointment who shall knowingly make a false return shall forfeit and pay the sum of two hundred dollars, to be recovered in the name and for the use of the territory, before any court of competent jurisdiction.

Section 17. The said enumeration shall commence on the first day of December, A.D. 1847 and shall be completed and closed within fifteen days thereafter. It shall include only those who are residents of said respective counties or divisions on the first day of December aforesaid and shall be made by an actual inquiry by the persons taking such census at every dwelling, or by personal inquiry of the head of every family in their respective counties or divisions.

Section 18. Every assistant shall by the twentieth day of December, A.D. 1847 make and deliver to the person by whom he was appointed a true and accurate copy of the enumeration of all persons whose enumeration is herein provided for, which shall be set forth in a schedule designating the townships, precincts, or districts constituting his division according to the civil or geographical boundaries thereof, and shall embrace the several families by the name of the head thereof and the aggregate number therein.

Section 19. The persons appointed to take such census shall each be allowed the sum of five dollars for making the abstracts or copies required by section fifteen, and said persons and their assistants shall receive as compensation for the service performed in taking said census at the rate of one dollar for every one hundred persons enumerated by them respectively: *Provided,* That in the counties of St. Croix, Chippewa, and La Pointe said compensation shall be at the rate of three dollars for every one hundred persons enumerated therein, and in the county of Richland at the rate of five dollars for one hundred, and in the county of Portage three dollars for every one hundred; *Provided,* also, That each county shall pay for taking the census in its own limits and for the abstracts and copies of the same in the same manner as other county expenses are paid.

Section 20. If it shall appear from the returns of the votes cast upon the question of adopting the constitution which shall be sub-

mitted by the convention to the people that the same has not been adopted, it shall be the duty of the governor of the territory forthwith to issue a proclamation authorizing an election of delegates to form a constitution for the state of Wisconsin at such time as he may designate. The number of delegates so to be elected in each county, the eligibility of persons to the office of delegate, the qualifications of voters at such election, the manner of conducting the same, and of taking, canvassing, and returning the votes cast at such election, and of making out and delivering certificates of election shall in all respects be the same as is hereinbefore provided.

Section 21. The delegates so elected under the twentieth section of this act shall assemble at the Representatives' Hall, in the capitol at Madison, in said territory, on the fourth Monday after such election, at twelve o'clock M., and when so assembled shall have the same powers and shall perform the same duties and receive the same pay as is hereinbefore prescribed in relation to the delegates first above provided for.

Section 22. The superintendent of territorial property is hereby directed to procure, previous to the assembling of the convention first above provided for, a requisite supply of stationery for the use of the members thereof; and the sum of six hundred and ninety dollars is hereby appropriated out of the territorial treasury for that purpose, and the further sum of six hundred and ninety dollars is hereby appropriated, to be expended in the same manner for the use of the second convention above provided for, in case the same shall be authorized by proclamation of the governor as aforesaid, and to be drawn out of the territorial treasury after such proclamation shall have been issued.

Section 23. The annual session of the Legislative Assembly which is required by law to be held at the capitol, on the first Monday in January next, shall be held at the same place, commencing on the first Monday of February next; and all territorial officers elected at the last annual session for the term of one year shall hold their respective offices until the close of said February session, or until others shall be elected and qualified in their stead.

I. P. WALKER, *Speaker of the House of Representatives*
HORATIO N. WELLS, *President of the Council*

Approved, October 27, 1847
HENRY DODGE

PROCLAMATION BY HENRY DODGE, GOVERNOR OF THE TERRITORY OF WISCONSIN[4]

To All to Whom These Presents Shall Come, Greeting:

WHEREAS, The people of the territory of Wisconsin did on the 5 [1st] day of February, A.D. 1848, by a convention of their delegates, assembled at Madison, the seat of government, form a constitution for a state government, which by the fourteenth article of said constitution was submitted to the qualified electors of said territory for their acceptance or rejection; and

WHEREAS, The said electors did meet at their respective county seats and election precincts on the 14th [13th] day of March last, and did then cast their votes for or against the adoption of said constitution; now, therefore,

BE IT KNOWN, That from the official returns of said election as made to the executive department, it appears that the whole number of votes cast on the question of the constitution was twenty-two thousand five hundred and ninety-one, and that the majority was ten thousand two hundred and forty-three votes in favor of the adoption of said constitution.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the territory to be affixed, at Madi-
[L. S.] son this tenth day of April, in the year of our Lord one thousand eight hundred and forty-eight.

HENRY DODGE

[4] From Madison *Wisconsin Argus*, April 11, 1848.

PART II POPULAR DISCUSSION

SELECTIONS FROM THE MADISON *WISCONSIN ARGUS*

REVISING THE CONSTITUTION[1]

[May 4, 1847]

The last number of the *Rock County Democrat* publishes the following article under the head of "How would it do?" The proposition strikes us very favorably, if there is no legal and constitutional objection—and we know of none. A new convention cannot be held at an expense less than from $20,000 to $30,000. Territorial paper is depreciated about twenty per cent, and the additional cost of a convention now would ruin our credit. Time would also be gained, so that it might be voted upon next April. It would also save much contention and difficulty and would in every respect answer the public demand. Most of the objections to the constitution have been enumerated in this article. There is one very palpable one we will mention. The constitution sadly needs revising. It is full of bungling sentences and awkward expressions, which need rectifying. But most of its provisions are correct, when clothed in proper language. It needs only such alterations as a legislature might easily make. The *Democrat* says:

> We have paid some attention to the opinions of the press and more to the opinions of individuals as to the grounds of opposition to the constitution—and we think we are safe in saying that it is admitted almost universally that the sixth section of the bank article and the article on the rights of married women and homestead exemption were the principal points objected to. The election of judges by the people and "the numerous legislature" were, during the canvass, occasionally alluded to—but always as matters of minor importance. There was no direct issue made upon them, and we cannot tell whether they were popular or otherwise. Throwing out of view all uncertainties, let us deal in conceded facts and see if we cannot enter into a compromise and get a good and popular constitution without incurring the expense of a new convention. We agree at once that those articles obviously condemned by the people should be thrown out. Suppose, then, that the legislature at its next session should pass a law submitting the rejected constitution, freed from all its clearly condemned parts, to a vote of the people, thus obviating the

[1] The titles as they appear in this volume differ in some cases from those in the newspapers.

necessity for and the expense of a new convention—how would it do? We put this question to the people and the press, believing it to be of sufficient importance to enlist their attention.

What say the people and press to this proposition? Is it not a good one?

A CONSTITUTIONAL PARTY

[May 4, 1847]

We have received information from Milwaukee that an effort is on foot to organize a "Constitutional" party, as contradistinguished from the Whig and Democratic parties. Precisely what this party propose to advocate, we know not. If it is to resuscitate the old constitution, we have only to say the people have weighed that in the balance and proclaimed it lacking. If it means that they are to advocate the next constitution, right or wrong, we have only to say if the next one meets our approbation, we shall be with this new party in its support; if not, we shall assuredly oppose it—and we shall either oppose or support it as it squares with our notions of Democracy. The people of Wisconsin are a great constitutional party. The only difficulty is in adjusting details. A distinct party known as "Constitutionalists," without defining what "kind," strikes us as exceedingly absurd—for all parties will be for or against as they like or dislike it; and they cannot know which until the document is before them. An effort to form such a party with no basis but a mere name is a strange hallucination. We hope the Democracy of Wisconsin will have no fellowship with any such party. A constitution should stand or fall on its own merits; and to proclaim in advance either for or against it is the height of folly. Let Democrats take no part but to send good men and true to the next convention. They want a Democratic constitution, such as the old one, with proper modifications. This they will have as Democrats, and a "Constitutional" party cannot alter their opinions. We hope our political friends will not burn their fingers by any such new-fangled notion.

SHALL THE LEGISLATURE REVISE THE CONSTITUTION?

[May 11, 1847]

The proposition for having the members of the next legislature revise, alter, and amend the constitution and submit it to the people

without the trouble and expense of another convention appears to meet with general approbation. We have noticed but one opponent as yet. The editor of the *Sentinel and Gazette,* taking courage from the foolish despairing of the *Democrat,* "that the next convention would undoubtedly be Whig," and wishing to have its friends have a grab at office, under this hallucination does not at all relish the proposition. Notwithstanding this, we are not without hopes that the people will consult their own true interests and adopt a course which will preserve the public credit and save them from an enormous and useless taxation.

It is admitted on all hands that a constitution might properly be submitted by the legislature, that all necessary alterations might be made by them, and that the extra expense would be nothing to the people. What good objection, then, can be urged against this plan? If time, expense, and trouble can be saved, and the same results accomplished just as well, why not adopt it? What will be gained by another convention? Anything that might not be done by the legislature? No one pretends this. We say, then, it is a matter of the highest moment for the people to express themselves on this subject—to save the trouble of a special election, and especially to save themselves an expense of at least thirty thousand dollars.

A DEMOCRATIC APPEAL FOR DELAY

[May 11, 1847]

Rumor has become quite confident, of late, that the governor will call an extra session of the legislature at an early day. This may be so, but we do not believe that anyone knows much about it. If a special session is called, we presume it will be in accordance with a general expression of sentiment in favor of the measure.

It is but little more than a month since the vote was taken on the rejected constitution, and we do not believe there has been time for a general expression of opinion either for or against an immediate movement for another convention. Nor do we believe the governor would determine upon it without due consideration and upon as full an expression of the public will as would be likely to be obtained by a little delay.

The *Democrat* has spread its sails to this breeze and is out in hot haste for a new convention; but we do not regard this as any certain indication that the proposed measure is either wise, politic,

or popular. The *Democrat* has aided very materially in running us on to one snag; and if it accomplishes anything in future, it will only be to help us on to another and perhaps a worse one. But a few days ago it was sure the next convention would be Whig; and now it is pell-mell for having it as soon as possible.

We are not disposed to admit that the next convention will be Whig, under any circumstances, and shall not be till we have tried them a hack at the polls; but still they know, and Democrats ought to know, that their chance is about twice as good now as it will be six months hence; and then it seems strange, too, that those who went for the whole constitution and have sworn by lots of moonshine that they never will go for anything else should be in such haste to try the very same question over again. If the homestead exemption, the rights of women to be men, a legislature "consisting of not less than three nor more than five barnyards full," possess such transcendent beauties that when the people once see them in their true light they will adopt them, why give them time to "wool" these things? It takes time for nebulae to condense to solid rock. It can't be done in a minute; nor can the sober second thought perform its office till the man himself has got sober.

We may be mistaken, but from all we have been able to learn we think the current of opinion is against the measure, decidedly so. The chief consideration in its favor seems to be that we may get into the Union in time to cast our vote for the next president. But cannot this be accomplished without an extra session? The legislature could pass an act during the first week of the session, a convention could convene under it in the latter part of February, and the vote could again be taken upon it at the April election, or that election might be put off till the first of May, and then there would be abundant time for our admission during the long session of Congress, which probably will not terminate until August or September.

We do not desire to dictate in this matter, but only to give our opinion; and our fellow citizens will, of course, weigh it in their own balance and petition or remonstrate according to their own views of propriety. For our own part, we are opposed to "hurrying" on a new convention for a hundred reasons which we should suppose would occur to Democrats, especially, without being mentioned.

CONSTITUTIONAL PRINCIPLES: I GENERAL

[May 25, 1847]

The constitution lately submitted to the people of Wisconsin having been rejected by a majority which astonished its most sanguine opposers, and the heat of battle having in a measure subsided, we propose to take a review of the instrument and endeavor to discover the true causes of its failure, and to what extent those causes were founded in sound reason and to what extent in prejudice and error.

We trust that neither constitutionalists nor antis will take alarm at this announcement, as we do not intend to cast unfavorable reflections upon those who were in favor of, or those who were opposed to, the constitution, nor upon those with whom we have differed respecting particular portions of it; but as it is acknowledged on all hands that the rejected constitution will form the basis of a new one, we wish rather in a cool, dispassionate, and friendly manner to reason with our Democratic brethren upon the great principles involved in that instrument, and if possible to promote a more general understanding as to what portions of it are worth preserving, and what portions should be abandoned as unsound and impolitic.

From the foundation of our government to the present time the Democratic party, with few exceptions, has been the dominant party in the several states and consequently has had the chief control in the affairs of the Union. To what, we ask, does this party owe the origin and maintenance of its ascendancy? The reason, we apprehend, is simply this: The master spirits who founded the party and who bore so conspicuous a part in the founding of the government were men deeply versed in the science of government—men who had minds and hearts capable of appreciating human rights and discerning right principles and discriminating between these and the assumptions of civil and religious despotism on the one hand, and the licentious freedom of the French revolutionists on the other hand; and had the manly independence to adhere to those principles which commend themselves to the reason and judgment of mankind and to square their policy by those principles. This was the secret of their success and it is the secret of the success of the Democratic party from its earliest history to the present time. That party has availed itself of the increasing light of political economy and of past experience, being the first to discover its own

errors and ever ready to abandon them when discovered; and professing adherence to no principle which would not bear the severest scrutiny of enlightened reason, they have stood and triumphed; and these principles have sustained the "party," and not the party the "principles." The party laid its foundations upon the rock of truth, and the superstructure has been steadily rising in grandeur and strength from year to year.

This leads us to notice an erroneous impression which seems of late to have taken possession of many minds and which threatens the ruin of this now powerful party unless checked in time, and that is that Democratic superstructures sustain their foundations and that consequently they may be built upon rock or sand, indifferently, and with equal safety—that because the Democratic party has become strong in numbers and apparently invincible in the field of political strife it may adopt any principle however inconsistent it may be with reason and experience, and however many times it may have been introduced into the policy of nations as a new discovery, and scourged out again as a foe to social happiness and good government, and by dubbing it as Democratic secure for it the assent and veneration of the party and gain converts from among its opponents. This is a ruinous mistake. The Democratic party is not strong on account of any magic attached to its name or to the men who assume to lead it. It is strong so far and so long only as it adheres to principles which will stand the test of rigid, thorough investigation and the still more satisfactory ordeal of experience; and when we expect an American community to receive new principles of government or important changes in the social system upon the mere *ipse dixit* of party leaders, we shall most generally be found "reckoning without our host."

We are aware of the fact that parties sometimes succeed upon false principles and suffer defeat upon sound ones. The struggles of the Democracy for commercial emancipation and to secure to the nation a sound currency have furnished instances of this kind and will doubtless furnish others; but a triumph upon false principles will, most commonly, prove a short-lived triumph; and a defeat upon correct principles can be but temporary if those principles are manfully adhered to by those who know their truth and power.

It is not fair, we grant, to infer simply from the rejection of the constitution that any one of its principles was unsound. It raises a strong presumption that there was something radically

wrong about it, and that is all. We do not believe it was the case with our constitution, but it is quite conceivable that such an instrument may have been defeated from the sheer prejudices of minorities respecting different portions of it. We must, therefore, look deeper than the popular surface to ascertain what principles contained in that instrument are sound, and what, if any, are unsound. If all its provisions, after careful examination, are found to have had their origin in the nature and reasonableness of things, it will be fair to presume that its rejection was the result of prejudice against the body which formed it, or of a misconception of its provisions; and we may with perfect safety frame another upon substantially the same principles and calculate upon its adoption; for so far as the rejected instrument is radically right, a radical deviation from it would render the new constitution radically wrong. On the other hand, if it is found to contain important principles which, though specious in their character, will not bear the scrutiny even of ordinary minds, it will be fair to attribute its rejection, in part at least, to those principles and discard them in future.

We have extended our exordium to a full-length article and do not like to dispense with a single paragraph of it. We must therefore defer entering upon the main subject till next week.

CONSTITUTIONAL PRINCIPLES: II BOUNDARIES

[June 1, 1847]

As the question of boundaries excited no small degree of interest and discussion in the late convention and undoubtedly exerted more or less influence upon the election, it may not be amiss to bestow a few remarks upon it with reference to future action.

Many contend, and among them some very intelligent and well informed men, that Congress has trenched upon our rights of boundary in three particulars: first, in fixing the northern line of Illinois at 42° 30′ N., instead of the latitude of the southerly extreme of Lake Michigan; second, by giving to Michigan the country between the northern shores of Green Bay and Lake Michigan, and the southern shore of Lake Superior from the Menominee River of Green Bay to the Ste Marie's; third, by dividing the territory from the mouth of the St. Louis River, on Lake Superior, to the mouth of the St. Croix, on the Mississippi.

The first-named grievance is the one which has excited the most interest and, in our opinion, the one we should under existing circumstances care the least about; because in the first place we have no right to it; and in the second place we cannot get it even if we have a right to it; and in the third place, Suckerized and involved in debt as it is, we do not want it if we could get it.

As to our right—the great men of the nation have differed, it being substantially the same as that claimed by Michigan in respect to a part of Ohio; and we do not intend at this time to do more than barely state the position of the question. The Northwest Territory by the Ordinance of 1787 was divided into three geographical states by two due north and south lines, the eastern of which comprised the state of Ohio and the most of Michigan as they are now bounded; the middle state included Indiana and the greater part of Lake Michigan; the western state included Illinois and nearly the whole of the present territory of Wisconsin. The ordinance then provides "that the boundaries of these three states shall be subject so far to be altered, that if Congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan."

The original right, therefore, of Congress to confine the whole of Michigan and Wisconsin as parts of the original states and thus to preclude their separate existence altogether cannot be questioned; and indeed this point was conceded in the great controversy in Congress respecting the right of Michigan to a part of Ohio; and the ground of controversy was narrowed down to this: whether, if Congress did find it expedient to form one or two additional states, the ordinance did or did not require that they should include the "whole" of the territory lying north of the designated point. And this question turned upon the proper meaning of the little word "in" as it stands in the sentence quoted. Had the word been "of" instead of "in," the claim would, perhaps, have been more clear. Had it been "within" instead of "in," the claim would, perhaps, have been more manifestly without foundation. As it is, if it can be shown that the county of Dane is not "in" Wisconsin because it does not include the whole of it, we may reasonably claim that it was foreordained by the Continental Congress that if such a state as Wisconsin should ever exist, the southerly extreme of Lake

Michigan should be the exact latitude of its southern boundary, and not otherwise.

We said we could not get that portion of Illinois even if we had a right to it. Congress has recognized and ratified the present boundaries of Illinois and is bound by the Constitution to protect her in the peaceable possession of every inch of ground which it has recognized as within her jurisdiction. She may, therefore, insist upon her present boundary, as she doubtless would if the question were brought up; and the faith and resources of the nation are pledged to back her up. We cannot resort to the courts while a territory, because, as everyone will admit, as a territory we have no rights of boundary but such as Congress sees fit to give us. Congress never has, and never will, and never ought to lay the foundation for a civil war by admitting a new state with a pending question of boundary between it and another state. It would be imminently hazardous to the peace and stability of the Union to do so. We cannot become a state without the consent of Congress; and that consent, we may be well assured, will never be given till the question of boundaries is settled, and so settled as not to conflict with its previous engagements with other states—and here we are.

The second point of grievance is altogether imaginary. The line established by the ordinance, between the middle and western states, grazes along the eastern coast of Wisconsin from south to north, and taking to the land near Twin Rivers, cuts off a long point of the peninsula and adjacent islands now belonging to Wisconsin; and crossing Green Bay, cuts off a large portion of the country west of the Ste Marie's, which is now claimed as having been wrongfully wrested from Wisconsin and given to Michigan. The ordinance line has indeed been altered, giving to Wisconsin a portion of country which would otherwise have belonged to Michigan, and to Michigan a portion of country which would otherwise have fallen to Wisconsin. Michigan may have the best of the bargain in the alteration; but however much she may have gained or we may have lost by it, the right of Congress to make the alteration is as clear as language can make it. It was one of the lines established by the ordinance; and the same article which establishes them declares that they shall be subject to be altered for the very purpose for which the line in question was altered.

In the extent of our jurisdiction we have gained more than we have lost by the alteration, although what we have gained upon the

east is mostly water. Had the ordinance line been retained, our jurisdiction on Lake Michigan would have extended about a cable's length from shore along about half of our present coast. As it is, our berth extends to the middle of the lake; and the time may come when we shall regard this extension of our marine jurisdiction as far more important than the jurisdiction of the country between the Menominee River and the ordinance line.

In respect to the third point of grievance, we have only to say that we can see no necessity for extending the area of a state beyond what is necessary to include a sufficient amount of wealth to sustain a respectable and efficient government without onerous taxation. The example of other states and a comparison of their natural resources with ours seem to indicate that the area proposed by Congress is amply sufficient for the state of Wisconsin.

NATIONAL REFORM

[June 1, 1847]

The National Reform humbug is about raising a buzz in Wisconsin. The *Courier* and *Democrat,* with characteristic mud-headedness, are giving wind to its sails. It is announced that a great Mr. Somebody down East, who, like Monsieur Fourier, has found out that our laws and institutions are all out of joint, and never were anything else, and who can tell us all how to mend them, is coming to Wisconsin to enlighten us in the beauties of an inalienable homestead, "provided always" that we will have a little "dough" ready for him when he gets here, and all are strictly exhorted to cast in their earnings and be ready to worship the calf Fourier, and the calf Van Amringe, and the calf "wat aint got no name"; these be thy gods, O geese, that brought you up.

It is asked with an air of satisfactory triumph, "Who is he who would refuse to vote himself a farm?" So every man is to have a farm by voting for it! The idea of buying and selling land is regarded by these reformers as a monstrosity not to be tolerated. The land, they say, should be as free as the air or the water; that every man has a natural right to it—they do not say exactly how much a man is born heir to, but probably Mr. Van Amringe when he arrives here will tell us for about two bits how much every man is entitled to by "natur." Nor does it definitely appear whose farms they are going to appropriate to themselves by a vote; and

probably they do not regard that as a matter of much consequence. But the good seed of burdock and Canada thistles is to be sown broadcast over the territory in time to reap an abundant harvest in the next constitutional convention, where it is expected that all previous titles will be obliterated and the land will be divided to all men equally, and Uncle Sam will thenceforward be prohibited from selling to any one man more than the said Van Amringe shall say he needs; and he must not sell him that—but give it to him—and then, according to the gizzard of the calf, any other man will have an equal right to it.

Did we belong to the National Reform Association, we would move to amend the creed so as to have every man born with inalienable right to a store of goods, a printing office, and a shoemaker's kit. Indeed we are not sure but it would be a good notion to have every man born with a right to be supported by somebody else.

But, seriously, we hope this kind of nonsense will be kept out of the next convention, especially if that convention should be Democratic. The Democracy of Wisconsin have already reaped a sorry harvest from similar seed; and it is devoutly to be hoped that they will keep their hands clear of this miserable abortion of ignorance, loaferism, and folly. Wealth is power, in whatever form it exists; and there is just as much propriety in saying that every man shall possess a store of goods, or in limiting a man's stock in trade, as in saying that every man shall have a certain quantity of land, and that no man shall have more than a certain quantity. If a man is a farmer, he needs a farm of course, and in this country, if he has industry and economy enough to manage one, he can get the means to buy one. But a large portion of every civilized community must forever be engaged in the prosecution of the arts, or those arts must be abandoned and society must sink back to a state of barbarism. An artisan no more needs a farm than a farmer needs a printing office; and artisans as frequently become wealthy, as farmers.

These reformers have either lost sight of or never understood the great, fundamental principle in the production and maintenance of the wealth of a civilized nation—the division of labor—or they would never advocate a system which, if successful, would annihilate it. And they commit another blunder. They seem to suppose that the excess of wealth possessed by one man over another has been wrongfully filched by the richer from the poorer. This may sometimes be the case, but not usually. Take one ex-

ample, which may be seen in real life any day. One man arises at five in the morning and works till seven at night, and his hands being all the while directed by an intelligent head, he produces three dollars of actual wealth which did not before exist. Another rises at nine and blunders about without arrangement or design for the rest of the day and, like a hungry sow, from the mere impulse of want, and produces one dollar.

Now, if we take one dollar from the richer and give it to the poorer, we do, indeed, make them even, but what will be the effect? Why, the industrious, intelligent agent will be deprived of the proper stimulus to exertion and will accomplish less the next day, while the lazy, stupid one will be urged by no motive and accomplish nothing.

The disparity between the rich and the poor is indeed an evil; but the pity is that the poor are poor, and not that the rich are rich; and here, as usual, our reformers get the thing wrong end first—they fall to kicking and cursing the rich, because they are rich; when, in a vast majority of cases, the wealth they possess would never have existed but for their own agency, and which, if taken from them and given to the poorer class, would very soon be squandered and annihilated. The plan of these reformers is to level down. We go for leveling up.

LEGISLATIVE REVISION OF THE CONSTITUTION

[June 1, 1847]

THE PROPOSITION

The *Western Star* denies the power of the legislature to submit the constitution again to the people in an amended form and says, "As well might any other men form a constitution and submit it to the people, as the legislature." Exactly. So far as authority is concerned, any other men might as well form a constitution and submit it to the people; and we would like to know why a constitution proposed by any man or any set of men, if adopted by the people, would not be as good and valid as if it had been proposed by a convention. A constitution can have no manner of force until adopted by the people; and such adoption is the only thing which can give one force.

The only consideration in respect to the origin of the instrument which is of the least consequence is that it should proceed from a source which would secure for it a respectful consideration

and a general vote for or against. It is singular, indeed, if the legislature has power to provide for a new convention, and one cannot be held without its authority, that it have no power to submit the old constitution, with portions stricken out or submitted separately, to another vote of the people.

But we hold that even a new convention might be held without any authority from the legislature, and by any preparatory steps, no matter what, which would secure concert of action. If a new convention is to be had, the preparatory steps could more conveniently and perhaps more satisfactorily be taken by the legislature than by any other means; but so far as authority is concerned, the action of a preparatory convention would be equally valid, except that the legislature could wield the territorial government in providing means to defray the expenses of the constitutional convention, which a mere political convention could not do.

We think it quite probable that the legislature will feel a degree of diffidence about adopting the proposition, but on the point that it has not the power to adopt this course, or that the constitution thus submitted could not be enforced if adopted by the people, we must differ with the *Star* entirely. There are some considerations in favor of its being taken up and remodeled by the legislature, which have not been mentioned, and we will here allude to one. The legislature consists of two houses—a most important feature in a legislative body. Had the same men who composed the late convention been organized in two separate houses—say forty in one and eighty-five in the other—we are confident that most of the objectionable features which resulted in its defeat would have been kept out.

CONSTITUTIONAL PRINCIPLES: III EXECUTIVE AND ADMINISTRATIVE

[June 8, 1847]

These articles in the rejected constitution were not seriously objected to. But as the whole instrument is lost and the ground must be traveled over again, it may be well to inquire whether they cannot be improved.

The powers conferred and the duties imposed upon the executive and administrative officers by the articles in the old constitution present nothing remarkable and do not differ materially from the

powers and duties usually appertaining to those officers. But the tenures of those offices, taken in connection with the constitution of the legislature, we believe are rather unusual, and perhaps of doubtful policy. We allude to the provision by which the executive and administrative officers and the members of one house of the legislature were all to come in and go out of office at the same time; and every alternate year this was to have been the case with respect to every officer of the state government excepting the judiciary—including both houses of the legislature.

If this be an evil at all, the only way to remedy it seems to be to extend the term of some of the offices, either legislative or executive; for diminishing the longer terms would only increase the evil—the executive and administrative officers and members of the senate having been proposed to be elected biennially, and the members of the house annually. We know there is a general feeling in favor of the shortest terms of office compatible with efficient and skillful government; and when this policy is guided and controlled by an intelligent application of this rule, it is perfectly right. There are two considerations usually urged in favor of short terms of office, one of which is sound and the other unsound.

The unsound one is sometimes called the principle of rotation in office, or the fashion of passing offices around like a mug of cider—everyone being required to take a short nip that it may go the farther. If offices were created for the benefit of those who hold them, as cider is made for those who love it, and as there cannot very well be offices enough for all, and as all, if any, have a right to office, the principle of rotation would be correct as the only method of distributing the honors and emoluments of office. But the republican principle is that offices are created exclusively for the benefit of the people, and that so long as the duties appertaining to them are discharged properly and faithfully, it is a matter of perfect indifference who fill these offices, or whether they rotate or not. The object for which an office was created being fully accomplished, nothing further can reasonably be desired, unless we adopt the principle that the office was created for the benefit not of the public, but of the individuals who might successively hold it.

The second reason is that terms of office should be sufficiently limited to secure a strict accountability to the sovereign power from which the official authority is derived and for whose benefit or injury it may be exercised; and the only question is as to what arrangement of the terms of office in the several branches of gov-

ernment will best secure this object. And in respect to this matter it should be borne in mind that the immediate and absolute supremacy of a mere numerical majority is not recognized in either our federal or state systems of government, and it has no place in the republican system. The power of the smaller house of the legislature to arrest the doings of the larger and the power conferred upon the executive head to control a majority of both houses, as provided in the rejected constitution, are positive denials of the absolute supremacy of a mere numercial majority. These checks and balances, which will be found in every republican constitution, are provided to guard the rights and interests of minorities and localities, over which, as all can see, a numerical majority should not have absolute control. They are admirable contrivances by which majorities and minorities and different localities exert a salutary control over each other.

Near of kin to these contrivances and without which they would fail of accomplishing their object is the expedient of prescribing different terms of office for different but coordinate branches of the government. Public measures affect not only the present but the future interests of the people; and in order to guard the public interest against the more remote as well as the immediate consequences of a particular measure, it is important that the day of reckoning for the different branches of the government should recur at different and, in respect to some one of them, at a somewhat remote period, in order that different branches of the government may be held more immediately responsible for the consequences of their acts, as they may become developed at different periods of time. The periods of reckoning prescribed for the coordinate branches of the federal government are two, four, and six years; and the salutary influence of this arrangement in promoting cautious deliberation, searching inquiries as to remote consequences, and in giving tone and stability to the government is not, we think, as fully appreciated at the present time as it should be.

The extensive interests which come under the supervision of the federal government may render an extended term of office in some one or two of its branches more necessary than in a state government. Still, as it requires time under any government for the effects of any public measure to become fully developed, the principle should not be lost sight of in the organization of state governments. The founders of our federal system possessed no ordinary quantum of intellect and learning; and their work, when

carefully considered, will be found to be the result of the most profound reasoning and research, and affording an example which with sixty years' experience of its happy results should not be lightly esteemed; and we commend it to the serious consideration of our fellow citizens whether in our next constitution the terms of either senators or governor should not be somewhat extended.

The terms proposed for auditor and treasurer are quite long enough, especially if they are to be elected and held responsible only to the courts and political conventions. In respect to the financial officers of the state it seems to us that the old constitution is radically defective. It provides that the secretary of state, who was to have been ex officio the auditor, and the treasurer should hold their offices for the term of two years without any qualifications or conditions. Under such provisions the treasurer might embezzle the public moneys, or speculate upon them, or shave the public creditors to any extent, or the auditor might perpetrate frauds upon the treasury, and retain their offices for the full term of two years, in spite of the governor, the legislature, the courts, or the people. It seems that in our anxiety to make public officers immediately responsible to the people we proposed to relieve them of all immediate responsibility whatever.

All experience teaches that a financial officer should be amenable to some efficient power which could snap his head off without ceremony when detected in, or even become subject to a reasonable suspicion of, malfeasance in office. The executive would seem to be the only proper repository of such a power; and if the governor has the power to remove, he should have power to fill the vacancy. And yet, we acknowledge that there is a difficulty about it; for if there is an imperative necessity that the governor should have authority to remove such officers at discretion, their election by a popular vote would appear to be a useless formality.

CONSTITUTIONAL PRINCIPLES: IV ORGANIZATION OF THE LEGISLATURE

[June 15, 1847]

The chief objection to this article was to the number which was to compose the house of representatives and the expense which it would involve. The number first reported by the committee, if we remember correctly, was 45. In apportioning this number to districts, it was found difficult to give satisfaction to members of the

convention representing the less populous portions of the territory, who insisted upon having at least one representative to each of the smaller counties. This could not be done with the number proposed by the committee without too wide a departure from the numerical principle as the basis of representation. After various propositions had been presented and discussed, the subject was referred to a select committee who, in order to give one representative to each county, or nearly so, without departing too far from the numerical basis to secure the concurrence of the populous counties, proposed 79 members; and their report was adopted by the convention.

Thus it will be seen that the error, if it was one, was the natural consequence of a large convention. Every county was there represented and it was natural enough that they should wish to be represented in the legislature. There being no possibility of apportioning a senator to each county, there was not the least difficulty in confining that body to a reasonable number. The great disproportion between the two houses shows clearly that the great number proposed for the house of representatives was rather the result of an ambitious desire on the part of those representing the sparsely settled portions of the state to secure a representative to each county, than of any public necessity—an ambition quite commendable in them, but which should not, perhaps, have been yielded to by the stronger counties.

The objection to so large a house on account of the extra expense we do not regard as a very weighty one, if any good could be derived from it. The difference in the annual expenses between a house of 45 and one of 79 members would not, ordinarily, exceed $5,000, and if no positive evil could result from the larger number, the greater satisfaction it would give would, we think, justify the additional expense. The stronger objections to so large a house are these: first, the difficulty of electing a sufficiently select body of men; and second, the difficulty of their acting with coolness and deliberation when together.

That there are a hundred men in Wisconsin who are tolerably well qualified for seats in a legislative body we do not question; but that a hundred such men could be elected we very much doubt. To enact wholesome laws requires an amount of mental cultivation and a degree of knowledge in respect to the principles of government which but few have either the inclination or the opportunity to

acquire; and yet the impression is quite common that almost any man who can read and write is qualified to legislate. It is no disparagement to the intelligence of the masses to say that this is a great mistake. No one man can know everything any more than he can do everything. Owing to the limited powers of the human mind a division of knowledge is as essential to its greatest aggregate development as is a division of labor to the perfection of the arts. We do not mean by this that politics should become a profession. Every man may have his calling or profession and at the same time attend to some one or more branches of knowledge not at all connected with it; and in respect to politics men may be found equally profound and equally shallow among all callings and professions; and we should not look for political knowledge in any one of them exclusively or indiscriminately. A man is not qualified to legislate simply because he is a lawyer or because he is a farmer, but because he has made himself acquainted with the objects and principles of government; and such men are more scarce than many suppose.

When a large number of representatives is to be chosen from the same county, it is usually the object of parties to secure two or three men who are well qualified and on whom they depend to do what is to be done and to keep the rest out of mischief, who are selected to pacify local claims and to gratify the political aspirations of individuals rather than for anything they are expected to accomplish. But after all, these men are not usually satisfied to be mere quads and spaces and to leave a blank behind. They wish to make an impression, and with the best intentions and the purest motives they oftentimes perplex and embarrass the deliberations of intelligent legislators and not unfrequently defeat their most sound and salutary measures. We have often observed and heard it remarked by others in respect to our territorial legislature that the smaller delegations usually comprised as great an amount of talent as the larger ones. The reason evidently is that those districts which had but few to select were more careful in making their selections; and we believe that between selecting a very large and a comparatively small legislature for a state a similar difference would exist.

A large body of men is always more excitable than a smaller one; and it is much more difficult to preserve that order and decorum which is so essential to deliberate action, especially when

its members are not remarkable for mental discipline and experience in parliamentary proceedings.

Again, a house four times as large as the senate could not transact business much more than one-fourth as fast as the senate; and as the latter will not, probably, under any constitution we may adopt ever be burdened with much executive business, it must, under such a disproportion, remain much of the time idle; or measures must be hurried through the house without deliberation, and thus the great object of having a house of representatives at all be practically defeated.

The plan of paying members two dollars per day for the first forty days and only one dollar for the remainder of the session, should it continue longer than that, we believe is without an example or a reason to sustain it. We do not suppose it was so intended, yet it does carry with it a direct imputation against the honor and integrity of the members of the legislature. It supposes that they would be governed by motives which would render them unworthy of confidence anywhere for a single moment. One or two of the first legislative sessions which will convene under a state constitution must of necessity continue for more than twice forty days and will certainly need the best talent we have among us. Is it to be expected that any man but a professional loafer would spend his time at Madison as a member of the legislature for barely enough to pay his board?

We doubt the policy of limiting the sessions of the legislature at all. If we say that no session shall exceed a certain number of days, we may feel tolerably sure that no session will ever fall short of it. We are inclined to believe that it would be better to leave the legislature without any restriction in this respect, but such as is imposed by a sense of responsibility to their constituents.

CONSTITUTIONAL PRINCIPLES: V THE JUDICIARY

[June 22, 1847]

The organization and functions of the judiciary as provided for in the rejected constitution we believe gave general satisfaction. The number of judicial districts and judges to fill them seems to have been appropriate; and the supreme court, being composed of the circuit judges for the first five years and until the legislature shall otherwise provide, is doubtless best adapted to our present cir-

cumstances, and the general provisions in relation to the qualifications and tenure of office of the judges are conceded to have been wise and salutary.

The chief objections to the article on the judiciary have been urged against its elective and rotary features— those in favor of filling the judgeships by appointment objecting to the elective mode adopted, and many of the friends of the elective mode objecting to the rotary mode of service.

Our views in regard to the election of judges have heretofore been given, and they have undergone no material change. We have a preference, though not a very obstinate one, for the appointing mode. The selection of men is never made at the polls, or at best it is but a choice between two. The choice of men cannot in any event be made by the people in their primary capacity. It must be done by some system of agency established by the people. Political conventions are one species of agency for this purpose; and the governor and senate, or the two houses of the legislature, constitute another system of agency. Of these three systems of agency we have and still do prefer, for the selection of judges, the governor and senate, as the one best calculated to secure good selections; and so far as the choice of men is concerned, the people have just as distinct a voice in the matter by this agency as they can have by any other—the choice is made by an agency of their own choosing, and this is as near as they can possibly come to it. The only remaining question is whether, after the choice of men is decided, anything can be gained by submitting the choice to a popular vote.

It is a universally received maxim in all parties that all questions in regard to men must be decided in the primary meetings or conventions and that the great question to be decided at the polls relates to party principles. In respect to most officers, we expect our votes at the polls will tell upon their official acts. The Democrat votes for a Democrat at the polls, not because he prefers him, ordinarily, above all other men in his party, but because he expects he will, if elected, pursue a different course of policy from his opponent; and just so with the Whig. Is there any such reason for submitting the claims of two candidates for a judgeship to a popular vote? Do we expect or desire that our votes should influence the decisions of a judge? In relation to public measures, we speak of Democratic policy and of Whig policy with reason and propriety, as involving important differences. But how would it sound to talk about a Democratic or a Whig judicial decision? The more violent

opposers of the conventional mode of choosing judges fear that this would be the tendency of the system, while the opposers of the appointive mode maintain that it would have no such tendency. So far as that is concerned, we agree with the latter class of thinkers; but at the same time it appears to us that to claim that the popular vote will have no influence upon the official acts of the judge is to admit that nothing can be gained by the elective mode in the only point where improvement is contemplated, leaving the evident advantages which attach to the appointive mode for securing the best selections, with nothing to counterbalance them.

It seems to be a great puzzle with many minds why it is not equally necessary to elect judges as to elect state officers and members of the legislature. We have endeavored to explain the reason, and it may be briefly repeated thus: In respect to the law-making power, every man is a sovereign and has a right to control and direct it; while in respect to the law-administering power, every man is a subject and has no such right. As a subject of law he is bound by the law as it is, until in his capacity as a sovereign he can alter it.

Still, we do not regard the mode of organizing the judiciary with that absorbing interest which some do. There appears to be a prevailing disposition to try the elective mode; and whether that disposition has its origin in sound reason or a mere love of novelty, it matters not. The people have a right to have things to suit them; and all we claim is a right to show them our opinion.

The rotary provision so much complained of was really no reason at all for rejecting the constitution, inasmuch as the judges were required to interchange circuits only "until the legislature should otherwise provide." The very first legislature might have abolished the rotation if it had been found not to give satisfaction. This measure was adopted with a view to remove the judges from a supposed liability to popular influence in their official acts. Taking the whole article together, it was a nominal resort to the elective mode of choosing officers, and four years only of the five a practical and total departure from it for fear of its consequences. It provided for the election of judges by single districts in preference to a general ticket, so as to bring the choice as near home to the people as possible, and then allowed each district the choice of its own judge one year out of five, and during the other four years allowed them no voice at all in the matter, either directly or indirectly; and

so far as choosing their own rulers was concerned, four years out of five the judges might just as well have been appointed by the Emperor of China.

After all, if the judges are to be elected by single districts, some such contrivance seems to be necessary. The judiciary is one entire and very important department of the state government; and it is the duty of a judge to enforce the will and authority, not of his particular district, but of the state. The laws are the ascertained will of the state; and it seems to us that a judge should by some means derive his authority from a source and be amenable to a power commensurate with the interests he is set to guard. If a single district has absolute control of its judiciary, we have as many heads to this department of the government as there are districts, any one of which might easily set at defiance the will of the state. During the South Carolina difficulty, had the United States judge, marshal, and district attorney been chosen in any form by the district of South Carolina, it might have been impossible to enforce the revenue laws of the Union without a resort to arms. During the antirent difficulties in New York, had the county of Delaware, for example, possessed the entire control of the judiciary within its limits, it would doubtless have been far more difficult to quell those disturbances.

The instances in which sectional interest would be likely to be arrayed against the general authority may indeed be rare; but such things have occurred and may again; and it is the part of wisdom, in establishing a government, to provide against every possible contingency. If the elective mode should finally be adopted, the only means by which to guard against this contingency, without practically obliterating the elective feature by the rotary system, seems to be to elect the judges by general ticket.

Another cross-legged affair in this article, taken in connection with the rotary system, is the provision requiring the judge to reside in the district for which he was elected. This is, in effect, prohibiting the judge from keeping his family in the district where he officiates more than one year in five. This violates a very important principle, inasmuch as it is wholly inconsistent with the rights of married women.

CONSTITUTIONAL PRINCIPLES: VI INTERNAL IMPROVEMENTS

[October 5, 1847]

The propriety and necessity of providing those means of communication called internal improvements, such as railroads, canals, and the like, whenever they are really needed and practicable, is generally admitted. The main point of difference between individuals and parties is whether these works should be constructed, owned, and controlled by the state, or by individuals and associations.

We are not prepared to take the ground that there never was a case, or that there never will be again, in which the resources of a state might be necessary to the accomplishment of a work of the kind. A work may be of vast importance to the public, while its magnitude may be beyond the ordinary power of associated wealth to accomplish; or it may be an experiment promising important results, but so far liable to failure as to discourage private associations from the undertaking.

The Erie Canal at the time of its commencement was doubtless in both respects a work of this kind. This magnificent achievement, which has not only paid for itself and proved a source of revenue to the state, but been the chief agent in spreading population, wealth, and refinement over four or five noble states, had it been left to the enterprise of private capitalists would not, in all probability, have been commenced to this day; and the idea of a railroad from Albany to Buffalo would have been regarded in much the same light as is the Oregon railroad now.

The sublime and successful experiment of New York not only led many of the states, especially the new ones, into visionary and ruinous imitations of her example, when neither nature, the wants of the population, nor the resources of the state furnished anything like a parallel of rational motives, but it also induced a spirit of cautious, calculating adventure in private capitalists, who have with far more success imitated the example of the Empire State.

New York having "broken the ice" and drawn the attention of private capitalists to these enterprises, the same necessity for state interference does not exist now that did then, even in respect to a work of equal or even greater magnitude. There is an abundance of private capital ready to be devoted to the construction of any work of the kind which will pay a reasonable interest on its cost.

Among the reasons why works of internal improvement should now be undertaken by private capitalists rather than by the state are the following:

First. If left to private capitalists, they will as a general rule be constructed only where they will prove advantageous to the public. The criterion by which this is to be tested is this: If the work—a railroad, for instance—will pay a fair interest upon its cost without heavier costs for what it carries than would be charged by other modes of conveyance, it will pay, and ought to be constructed, and will be so soon as capitalists ascertain the probable fact. If it will not, it will not pay, and ought not to be built, and will not be if left to private capitalists. If these works are undertaken by the state, they will, as experience has abundantly demonstrated, often be constructed where they will not sustain themselves and pay a reasonable interest, and then they are a public burden instead of a benefit. It will not help the matter at all if the state fixes a rate of tolls below the interest of its costs and the expense of keeping it in repair in order to bring rates within the cost of other modes of transportation; for in that case, what we do not pay in tolls we may be very sure we shall have to pay in taxes, and we might as well and even better pay a greater toll on a load of wheat than it would cost to take it to market in a wagon, for we should then save the cost of collecting the tax to make up the deficit in the tolls. This, we believe, is the true political economy of the matter.

Second. Private capitalists will always construct these works at a much less expense than the state can. Every stockholder in a company of this kind has a direct and personal interest in seeing that the work is done in the best manner and at the smallest expense; and this lightens the expense of transportation; while, under state management, no one can be anything more than an agent and can feel no such direct and personal interest. It seems unnecessary to argue the question of relative economy, for the bad economy of governments in all that they do—is quite notorious.

It is true that private capital cannot well be associated to the extent required for the accomplishment of an extensive enterprise, without the granting of charters and the establishment of monopolies. But they are not, after all, monopolies of the most odious kind; for although they have exclusive control of the works they construct, the old modes of communication are still left free to all who cannot better themselves by the new, and the new modes al-

ways reduce the rates of fare and freight upon the old; as the Erie Canal reduced the stage fare between Albany and Buffalo, and the railroad, in turn, reduced the fare upon the canal, so that, although the proprietors of the western railroad are deriving immense revenues from their monopoly of speed, yet the road, by affording a speedy transit, is a manifest advantage to those who value their time more than their money, and by reducing canal fare is a manifest advantage to those who value their money more than their time. The extreme evil, therefore, arising from a railroad company, for example, on the score of monopoly, amounts only to a negative good.

The aristocratic tendency of incorporated wealth is indeed a serious objection to all associations of the kind; and those which are incorporated for purposes of internal improvements, so far as their "direct" tendency is concerned, are no less liable than any others to this objection. But the objection in their case is greatly modified by their "indirect" influence in the opposite direction. Whatever tends to the concentration of wealth in the hands of individuals or localities is dangerous to equal rights; and whatever tends to the diffusion of wealth by affording equal facilities for its accumulation affords an additional security for those rights.

Without facilities for internal communication the wealth of a country must always be concentrated in the few localities which are favorably situated for trade and commerce. For example, with no facilities but common roads, a farm within five miles of Lake Michigan must always be worth from three to five times as much as one of the same size and fertility in the central portions of Wisconsin, on account of the difference in the expense of getting to market. Annihilate this difference, and you equalize the value of the two farms by adding to the one without subtracting from the other. The same is true in proportion as the difference in the expense of getting to market from different portions of the country is removed by improved facilities for internal communication. The diffusion and equalizing effects of these improvements upon the wealth of the country far more than counterbalance the aristocratic tendency of the associations which construct them.

If our philosophy is sound, the article on this subject in our rejected constitution took exactly the right ground by prohibiting the state from undertaking works of the kind, except in cases of grants made to the state for such purposes, and enjoining their encouragement by liberal acts of incorporation.

CONSTITUTIONAL PRINCIPLES: VII TAXATION, FINANCE, AND PUBLIC DEBT

[October 12, 1847]

The article in the rejected constitution relating to these subjects was in most respects quite to our mind. The provisions of the eighth section of the article, which, except in time of war, to repel invasion, or to suppress insurrection, limits the public debt to one hundred thousand dollars at any one time and requires a recorded vote of two-thirds of each house to contract a debt even to this extent, are of the highest importance. The injustice of allowing one generation to sell another, skin and bones, to the stockjobbers is becoming too apparent to be longer tolerated; and we cannot doubt that a similar restriction will be embodied in a new constitution.

There are, however, other provisions in this article which we think would have operated unjustly upon the public creditors and should be avoided in the new constitution. The fifth section declares: "There shall never be issued by or in any way on behalf of the state any scrip or other evidence of state debt, except in the cases and manner authorized in the eighth, ninth, and tenth sections of this article."

The only authority for issuing evidences of debt is contained in the ninth section and relates exclusively to the debts authorized by the eighth section to defray extraordinary expenditures: "All debts authorized by the preceding section shall be contracted by loan on state bonds of amounts not less than five hundred dollars each," etc. In respect to deficits in the revenue to meet the ordinary expenses of the government, the fifth section takes away all authority to issue "scrip or other evidences of state debt" and does not return it [in] any form or to any extent in the succeeding sections to which it refers. The only provision respecting arrearages in the ordinary expenses is that "the legislature shall provide for levying a tax for the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses of such ensuing year."

Under these provisions a public creditor might have an appropriation for labor performed or goods furnished; and if the treasury were empty, as would always be the case in respect to some appropriations, the creditor would be obliged to wait another year, with nothing to show for his claim but the appropriation act. At the end of the year he might find the treasury in no better condition

to meet his demand, and he must wait another year; and as the constitution would not admit of his being furnished with any evidence of the state's indebtedness to him and allows him no preference over a new creditor, he might be compelled to wait year after year, whatever might be his necessities, without so much as a scrap of paper to show or get shaved upon.

We suppose the object of this restriction was twofold: first, to prevent the issuing of paper which would be likely to enter into circulation as money; and second, to prevent public creditors from being shaved on auditors' warrants and the like.

As to the first named object, it would seem to be unnecessary to guard against the contingency until our indebtedness would sell for more than seventy-five cents on the dollar; and in any event the discrimination expressed in the bank article, "intended to circulate as money," would have been quite sufficient.

As to the second object, it would indeed be a great favor to secure to the public creditors their money without the intervention of a shave; but to guard them against a shave by giving them neither their money nor anything to show for it is a kindness from which most men would pray to be delivered. The articles should at least have provided that arrearages should be paid in preference to the current expenses of the year. In that case, the creditor, being sure of his money in the course of a year from the date of the appropriation, would not be likely to sell his claim even if he had it in a tangible form.

CONSTITUTIONAL PRINCIPLES: VIII TAXATION

[November 9, 1847]

In our article of the twelfth on "Taxation, Finance, and Public Debt" we did not do justice to that branch of the subject which relates to taxation.

The general principle laid down in the late constitution is that "all taxes to be levied in this state, at any time, shall be as nearly equal as may be." This is doubtless correct as far as it goes; and owing to the inherent difficulties in devising a system of taxation which shall operate with perfect equality, and the different phases of those difficulties under the varying circumstances of the body politic, the above provision goes as far, perhaps, as constitutional law can go with safety. The various propositions which were sub-

mitted and the discussions which arose upon them in the convention were a sufficient illustration of the difficulties in the way of fixing upon the details of a just and equal system; and the correct maxim that a constitution should go no further than to lay down clearly established principles, and such as are invariable in their operation, or nearly so, was, for once at least, adhered to.

It is generally agreed that taxes for general purposes should be levied upon property exclusively, and in all cases in proportion to its value; and yet it is manifest that there should be exceptions to this rule, taking the word property in its unrestricted sense. Now if we can fix upon any such exceptions, the reasons for which are invariable in respect to instances and unchanging as to time, they may very properly be made a part of the fundamental law.

Bonds, mortgages, and notes of hand are a species of property; and the question has to some extent been mooted, whether they should or should not be taxed as such. Our opinion is that they should not be taxed, for the following reasons: All will agree that to tax one piece of property once, and another and perhaps a similar species of property twice, would be unequal and unjust and a violation of an approved principle. Bonds, mortgages, and notes of hand are always given for some kind of tangible property, at least as a final result; for if given for money in the first instance, the money is always invested in something which cannot escape the assessor. Now, if we tax these evidences of debt and the property for which they are given, it is clear that we tax the same identical property twice over; for a mortgage on a farm and the farm on which it is given are worth in the aggregate no more than the farm alone. A note of hand given for a horse and the horse for which it is given are worth no more than the horse alone. Therefore, if we regard them as separate items of property and tax them both, we tax the same property double what we should if no note had been given. This is manifestly wrong in all cases and in all times. Either the farm or the mortgage, the horse or the note, should be exempted. The only possible question which can arise, as appears to us, is as to which should be taxed and which exempted. The chief reason assigned in favor of taxing evidences of debt is that they draw interest and so produce an income. But this is not always the case, for they are frequently taken without interest. But more of this matter of interest anon.

Another consideration urged in favor of taxing evidences of debt instead of the property for which they are given is that the former are held by the rich and the latter by the poor and that great care should be taken to administer to the rich their full share of taxation. But this again is not always so. Poor men as well as rich have money at interest, and rich men as well as poor pay interest and rent, and the one about as often as the other, and it is idle to think of benefiting the poor by laying extra burdens upon property in one form and releasing it in another. All such contrivances invariably benefit the rich more than they do the poor, for the reason that the privilege is open to all, and the rich can most readily avail themselves of it. These considerations abate somewhat the force of the reasons alluded to.

The difficulties in the way of taxing evidences of debt and exempting the property for which they are given are numerous and serious. The tangible property may be located in one county or state; and the evidences of debt given for it may be in another county or state and out of the reach of the authorities where the property is located, and in that event it would escape taxation altogether. Again, it would be very difficult for the assessor to ascertain what amount of evidences of debt a man might be possessed of. To put every man on his oath as to the amount, besides being obnoxious to the objection that it would be requiring every man to testify against his own interests and multiply temptations to fraud and perjury, would be attended with great labor and inconvenience and the annoyance would not long be tolerated. And again, if the amount could be ascertained, the assessor would know nothing about the value. It is not every note or mortgage that is worth its face. It might be worth the face, or but half of it, or nothing at all, and the assessor could not tell which; and yet an accurate knowledge of the value would be essential to a just assessment.

On the other hand, the property for which they are given cannot well escape the assessor; and when found, he has the means of estimating its value. Still it is objected that if evidences of debt are exempted and the property taxed, the effect will be to tax the debtor beyond his actual property. True it may tax him beyond his net estate, but not beyond the amount of property from which he receives an income; and it is only the productiveness of capital which enables its possessor to pay a tax at all; and it appears to us that he who receives the gross income of property should pay the tax.

Interest is generally considered, and correctly too, as the net income of capital after paying the taxes upon it and all expenses of managing and sustaining it. If then the borrower realizes a profit from borrowed capital sufficient to pay the interest on the money and the tax upon the property in which he invests it, and has a net profit left equal to the interest paid to the lender, is there any injustice in levying the tax upon the property, although the occupant may not in reality own it? We think not; and no prudent man will do business upon borrowed capital if he cannot make a profit at least equal to this. We think, therefore, that proceeding upon principle actual property should be taxed wherever it is found, and mere evidence of debt be exempted.

This doctrine may appear startling to some, but we merely hazard the suggestion and are willing it should go for what it is worth; and we do so with the less hesitancy, since we are regarded by some of our Democratic friends as being a link behind the swivel in the great chain of progression.

CONSTITUTIONAL PRINCIPLES: IX EXEMPTIONS

[November 16, 1847]

That the property of insolvent debtors should to some extent be exempted from forced sale for the satisfaction of the creditor, is a principle of government from which but very few will dissent.

The general principle being so universally approved, it may seem strange that so wide a difference should exist in respect to its application as evidently did exist in regard to the exemption incorporated in the rejected constitution. The difficulty we are confident arose chiefly from the want of a sound guiding principle in the application of the admitted one. The questions—to what extent, in what cases, and for what reasons is the principle to be applied, and by what rule is its application to be governed—seem never to have been asked, or if asked, were never satisfactorily answered; and these are the points which we propose now to examine. If we can discover the principle in which the doctrine of exemptions is founded we may, by following that principle as far as it will lead, ascertain very nearly the precise extent to which exemptions may properly be carried.

Upon what principle, then, is an exemption of property from the just demands of the creditor founded?

We answer negatively that it is not founded in the principle of justice. Justice requires that a man should pay his debt simply because he owes it, and not because he is able or unable. If a man's ability be the measure of his obligation, the knave who gets his neighbor's property into his possession and squanders it in riotous living is thus by his own profligate acts absolved from all obligation to pay; and such specimens of humanity exist in rich abundance in every community. Again, if a man's ability to pay is the measure of his obligation, rather than the fact that he owes, then a man who is able to pay another a certain amount is bound to pay it whether he owes it or not. Indeed, we must abandon the right of property altogether or admit that a man is bound in justice to pay a debt simply because he owes it, and for no other reason. The principle of justice, therefore, admits of no exemption, but pursues the debtor with its inflexible demands to the last farthing he has, and holds him bound for the balance, if there be a farthing still due. In what, then, is the doctrine of exemptions founded?

We answer affirmatively that it is founded in the principle of mercy, and in that alone. The question then arises: To what extent does the principle of mercy demand exemptions? It may be answered in general terms that its demand extends no further than to secure the debtor against immediate suffering by the rigorous operation of the principle of justice, and not even thus far when the arrest of justice would operate unmercifully upon the creditor. For example, if a man be so poor that he has but two loaves of bread in the world and honestly owes his neighbor one, and that neighbor has none, the principles of both justice and mercy require that he should pay it. But in our goodly land there are but very few who have not more of this world's goods than two loaves of bread; and hence the law may exempt the debtor's two loaves without the hazard of being unmerciful to the creditor.

With this principle for our guide, we may feel our way along the ascending scale as far as it will carry us. Thus, there are but few in our country who do not have not only two loaves of bread, but a table to put them on, and a few other articles of household utensils and furniture; and hence, all these may be exempted without much danger of being unmerciful to the poor creditor who has them not. But even at this point it operates oppressively upon a very few in a very few instances; but as the general good is to be consulted, and as many are relieved and but few burdened by it, the

principle of mercy demands it. We may ascend a step further and, assuming that there are but few who do not have not only the means of present subsistence, but a few of the indispensable implements of husbandry or of the arts, according to their several callings, exempt these with a degree of safety. But at this point the number of poor creditors who would possess less than the amount exempted would be very much increased, and the urgency of the demand of mercy in favor of the poor debtor somewhat abated. Still, many more would be relieved than distressed by its operation; and hence mercy may demand it.

With the means of present subsistence and the indispensable implements of labor the question arises whether an able-bodied man, in this country at least, is not free from the liability to immediate suffering and the demand of mercy satisfied. Possibly it might be extended so far as to exempt a team and a small amount of stock without a serious violation of the principle of mercy by its operation upon the poor creditor; but the cases in which the principles both of justice and of mercy would be violated must be greatly increased—we may say multiplied—for at every step in the ascending scale of exemption we leave a new and still larger class of creditors whose means fall below the amount exempted.

There are many heads of families who are not able to own a yoke of oxen. Now if A, in addition to the indispensables of life, owns a yoke of oxen and owes B ten dollars, and B is not able to own a yoke of oxen, do not both justice and mercy require that he should pay it? If A owns two cows and owes B the value of one, and B, on account of his poverty, has none, do not both justice and mercy require that A should pay B? And if A has but one cow, and owes B the value of it, and B, in consequence of his poverty, has none, does not justice demand payment, and can impartial mercy have ought to object?

With an exemption to the extent supposed, should the cases in which it would operate to the relief of the poor debtor so far outnumber the instances in which it would operate to the distress of the poor creditor as to justify it, still it is manifest that by carrying it a little higher we should not only exceed the demands of mercy in behalf of the poor debtor, but violate the principle of mercy towards the poor creditor in a multitude of instances; for it would be saying that he who owns two yoke of oxen and honestly owes his neighbor one shall not be required to pay him, although that neighbor, by reason of his poverty, has none. The exemption of prop-

erty from forced sale beyond the naked demands of mercy in behalf of the poor debtor, in a multitude of cases, and without the shadow of an excuse, under the plea of mercy to anyone, steps in between debtor and creditor and protects the richer in withholding from the poorer his just dues, to the utter subversion of the very principle on which exemptions are founded.

At every step in the ascending scale of exemption we leave a still wider circle of creditors whose means fall below the limit of exemption and who are deprived of the power to collect their debts of their wealthier neighbors. Here, in our opinion, lay the fatal error in the rejected constitution. It proposed to exempt property to the amount of one thousand dollars. Probably not over one-third of the male adults of Wisconsin possess property to this amount. Consequently the effect of the constitutional provision would have been to exempt two-thirds of the population from collecting their just dues from those who were worth more than they. It was like an excessive dose of medicine—well intended, and a moderate quantity of which would have proved beneficial.

We had intended to notice some of the difficulties in the way of exempting real estate, but we must reserve this for another occasion.

CONSTITUTIONAL PRINCIPLES: X EXEMPTION OF REAL ESTATE

[November 23, 1847]

So far as the interests of debtor or creditor are concerned, it must be regarded as a matter of indifference what kind of property may be exempted; for it is the value which is the chief consideration in either case. While men are allowed freely to trade with one another (and it will be a long time ere they will surrender that right) it is visionary to suppose that any class of men can receive extra benefit from the arbitrary exemption of a particular kind of property. It may in some cases be just as well; but in no case can it be any better than a general exemption of a specified value; while in many cases an exemption in kind would not fit the case of the individual, inasmuch as the law, whether constitutional or statutory, could not provide for the endless diversity of wants growing out of that minute division of labor which is peculiar and essential to a high state of civilization.

If the principle of mercy, having impartial respect to the poor creditor and the poor debtor, be the correct rule in the application of exemptions, as we argued last week, it follows that they should be uniform, as well as moderate in the amount of value exempted; otherwise they will violate the principle upon which alone exemptions are founded. For instance, if we exempt the tools of the mechanic, and in this case nothing more, the machinist might have five hundred or one thousand dollars exempted, and the tailor not more than ten, and in the former case the principle of mercy to the poor creditor would be violated by exceeding the demands of mercy in favor of the debtor to the distress of the poorer creditor, and in the latter case by falling short of the demands of mercy in favor of the poor debtor.

Similar, though greater and more numerous, difficulties arise in respect to the exemption of real estate. In the first place, if we adhere to the principle that exemptions should not be carried so high as to leave a very large class of citizens the value of whose possessions falls below the amount exempted, we shall be restricted to a value which, invested in real estate, would in a majority of cases be of little use to the poor debtor.

If a definite quantity of real estate be exempted without respect to the value, then the value exempted will be extremely indefinite, and the law will operate with every imaginable shade of inequality and injustice. Forty acres of land may be worth fifty dollars or fifty thousand dollars. A poor farmer may have his forty-acre farm with improvements which would make it worth five hundred dollars, while his neighbor over on the creek may have forty acres with a flouring mill upon it worth thirty thousand dollars. This farmer might sell this miller one hundred bushels of wheat; and such a law would protect the miller in withholding payment from the farmer.

If a definite value in real estate without regard to the quantity be exempted, we are involved in a labyrinth of difficulties in apportioning the quantity to the value. How would it be possible, for instance, to exempt the fifth part of a house and lot, or the tenth part of a farm, so that it would be of any practical benefit to the debtor without rendering the balance useless to the creditor or anybody else? Such a system, if operative at all, would be productive of unnatural and inconvenient divisions of landed property and greatly deteriorate the value of all real estate incumbered with

them and, indirectly, all other landed property, as it would all be liable to the same contingency. The market value of real estate depends greatly upon its being in a condition both as to quantity and situation for free, convenient, and productive use; and exempting it from forced sale cannot but subject it to all these detriments, unless we exceed in amount the demands of mercy in behalf of the debtor and violate both justice and mercy in the case of the poor creditor. For if there is any vitality or meaning in the terms "justice" and "mercy," it must be unmerciful as well as unjust to protect one man in the possession of one thousand dollars' worth of property against the honest demands of another who has but five hundred dollars; and it would be still more manifestly unmerciful to protect one man in the possession of five hundred dollars against the just demands of another who is worth but two hundred and fifty dollars. To exempt a definite quantity, provided the quantity does not exceed a certain value, would operate unequally; for in that case an estate which exceeded the limit of exemption, though it might be a few dollars only, would be entitled to no exemption whatever, although the owner might owe the entire value of it and be stripped of the last farthing by its sale, while his neighbor, with an estate worth but a few dollars less than his, would be protected in the full enjoyment of it.

To provide for the sale of property which might exceed the limit of exemption and the return in cash of the amount exempted would be, in effect, to abandon the exemption of real estate in any quantity which would be of any value to the poor creditor and which would not violate both justice and mercy in respect to the poor creditor, and leave it just where we think it should be, in all cases—an exemption of a certain value, and the debtor at liberty to choose the kind of property he will have—and probably he knows what will do him the most good quite as well as the lawmaker can.

The exemption of real estate or of any other property to any extent whatever is nothing more nor less than legislating money out of one man's pocket into that of another; and when confined within the most reasonable limits it is nothing else than appropriating by law the property of individuals for the relief of the poor; and it might very fairly be questioned whether this burden should not be borne by the public instead of by individuals. But the law of exemption has come into use; and as a mere measure of mercy there is no serious objection to it. But the idea of making

everybody rich, or of enhancing the wealth of the community by large exemptions, or by legislating money out of one man's pocket into that of another, is just as fallacious as the arguments of the Whigs in favor of restrictions on trade, and should never be entertained by Democrats.

We may hereafter offer some remarks on the effect of excessive exemptions upon credit.

CONSTITUTIONAL PRINCIPLES: XI EXEMPTIONS—CREDIT—COLLECTION LAWS

[December 7, 1847]

In another column will be found an article from the Southport *Telegraph* in reply to our first article on the subject of exemptions. With his characteristic honesty and fairness the editor concedes that if we admit the justice of the collection laws to any extent whatever, our reasoning is conclusive against large exemptions and defends them on the ground that credit is an evil, or at best unnecessary, and that hence the collection laws are unjust and impolitic, and that large exemptions are desirable, not as a measure of mercy to anyone, but as a step towards the total abrogation of the collection laws.

This is placing the question in the precise position to which we are hoping to bring it by one or two articles more, and has saved us some labor. If our friend will now with his usual candor and power of discrimination follow us through the field of inquiry to which he has invited our attention, we cannot but hope that we shall view the whole question nearly in the same light.

"The question is," says the *Telegraph*, "whether justice dictates the collection laws. We conceive that it does not, for the simple reason that no law exists compelling a man to give credit."

Very true; there is no statute law compelling a man to give credit; but does it follow that the collection laws are on that account unjust? What is justice between man and man? Is it not that each should render to the other his just dues? We must beg pardon for using the phrase "just dues," as it seems like begging the question at issue; for if the collection laws are unjust for the reason stated, there can be no such things as "just" dues, for certainly justice must require the rendering of just dues. If the collection laws are unjust, their operation must be unjust also; and it

must therefore be unjust between man and man to take from one that which does not belong to him and restore it to him to whom it belongs. If this be injustice, we must repeat our question—what is justice? And as our own understanding is a defaulter to the demand, we must beg of our friend, or of anyone who can, to answer the question.

But we cannot get it out of our old-fashioned noodle that there are such things as just dues, and that justice requires that they should be paid. No man, whether civilized or savage, can be made to believe that he has not a right to that which he has produced by his own industry against all the world besides, and for the simple reason that he has himself produced it. This is a natural sense of justice in respect to property of which mankind can never be divested; and to reject it is to deny the right of property altogether.

The particular manner in which A becomes possessed of the property of B, whether it is by purchase or credit, by loan to be returned at a set time, or by force against the will of the owner, cannot alter the fact that B's industry produced the property; and if that be the true ground of his right to it, the right can no more be affected than the reason in which it is founded.

Should A take B's property from him by force or by stealth—his horse, for example—the *Telegraph* will doubtless agree with us that, if necessary, force should be used to restore it. In this case B has performed no act of kindness to A. But suppose A goes to B and asks the loan of his horse to ride five miles. B, with the feelings and motives of a kind neighbor and purely to do A a favor, lends the horse. A is pleased with the horse and before he returns makes up his mind that he needs the horse more than B does and that he will not return him at all.

Now the question is—does justice require a law to compel A to return the horse or to take it from him by force and return it to B? The logic of our neighbor says no, because no law exists compelling B to lend his horse. That is to say—B, by doing an act of kindness to A, has forfeited his right to his property, which becomes vested in A by his abuse of the kindness and confidence of B. If this be the doctrine we are certainly entering upon a new era of fines and forfeitures. We must, however, beg leave to suggest an amendment to the new code, which is that the forfeiture for doing a kind act shall enure to the public and not to the individual who so basely requites the kindness and abuses the confidence of his neighbor. The horse should be taken from A and sold and the

avails put into the public treasury, unless we intend to reward vice as well as punish virtue.

But—say the advocates of no collection laws—you do us injustice. In such a case we would compel the restoration of the property to the rightful owner. We would let the law of replevin stand for the recovery of property in all cases which come under that form of action.

Very well. Can any man living tell us the difference, on the score of justice, whether A borrows B's horse worth one hundred dollars, or buys him on credit, or borrows one hundred dollars of his money, or gets a hundred dollars' worth of his goods on credit? We do not hesitate to say that justice cannot reveal a shade of difference between the several cases supposed. In either case B, as an act of kindness to A, has placed in his hands for a limited time one hundred dollars' worth of the avails of his industry and, as the *Telegraph* says, the question is—does justice require that he should restore it to the owner at the time agreed upon? And in either case the answer must be given and the same conclusions must follow the answer. The law of replevin exists, not because a man has any better right to the specific property lent than he has to the value of the property sold, but because that form of action in certain cases is better calculated to secure the property to the owner than an action for the recovery of the value of the property retained. If, therefore, justice dictates the law of replevin for the recovery of the horse lent, it no less dictates the same law, or one better adapted to the purpose, for the recovery of the value of the horse if sold, or the money lent, or the goods credited. Can a reason be found in the universe of mind why the law should restore to the owner his property if lent in the form of a horse, and refuse to restore it if lent in the form of money? Can the nature of the property temporarily intrusted to another affect the right of the owner to reclaim it? If not, then justice no more dictates the law of replevin than it does the laws for the collection of ordinary debts; and if justice does not dictate either, it abandons mankind to suffer for their virtues and profit by their crimes.

But it is contended by some, and perhaps the *Telegraph* is of the same opinion, that the giving of credit is a vice rather than a virtue and that the abolition of the collection laws is purposely intended to destroy the credit system.

It is a melancholy fact that an indiscriminate hue and cry has of late been raised against the credit system, and that it is confined

chiefly to portions of the Democratic party. The credit system has indeed been denounced from the high places of power and influence and by the ablest statesmen in the party. But they have had reference chiefly, if not exclusively, to the bank paper credit system, or the policy of establishing a currency based upon credit. Many of the lesser lights in the party have caught up the cry and repeated it with equal vehemence and far less discretion against ordinary credit between man and man—a thing which was never dreamed of by the fathers of the party.

From the commencement of Jefferson's administration to the present time the Democratic party, so far and so fast as the public mind became sufficiently informed to sustain its measures, has been endeavoring to conform the policy of the nation to the established principles of political economy; and it is painful to witness the extent to which honest-hearted but wrong-headed Democrats are declaiming against many of the principles of that science upon which their party has so long stood and triumphed.

One of these errors is that labor is the only source of wealth; and this leads them into another, viz., that credit is unnecessary either to the rich or to the poor. Political economy demonstrates and a moment's reflection will convince anyone of the truth that labor and capital are both essential to the production of wealth and that they must in some way be united. One man has capital but has not the industry to make capital productive. Another has industry but has not the capital to make his labor productive. To think of sustaining the wealth of the world by keeping labor and capital apart would be like attempting to sustain the population of the world by dooming everybody to a state of single blessedness. Capital and labor must be brought together; and this can be effected only by the intervention of credit. Nor is credit, in its effect upon those who receive it, the villainous thing it is sometimes represented to be. Four-fifths of our wealthy men were once poor. Ask them how they became rich and they will generally tell you that they started upon capital obtained by credit, and that without credit they must have remained comparatively poor. It is impossible to imagine any stroke of policy which would so effectually check the growing wealth of a nation and so suddenly put it upon a retrograde movement as the suspension of credit; for the poor, for the most part, would forever remain poor for want of capital to aid their industry, and the rich would become poor for want of industry to aid their capital.

Credit cannot be abolished. The constitution of human society and the nature of things forbid it. Men cannot avoid intrusting each other with their property in a thousand ways. They must trust agents with goods and money for transmission. Large amounts must accrue between individuals which are to a great extent indivisible. The builder must trust the employer for his work till it is done, or the employer must pay in advance and trust the builder for the work. A man must trust the tailor with his cloth to make up, and the tailor must trust his employer for his pay till the work is done. The blacksmith must trust the farmer for shoeing his horse, or the farmer must trust the blacksmith with the pay in advance. The laborer must trust his employer for his month's or day's work, or the employer must pay the laborer in advance and trust him for the labor. Indeed, it is impossible to conceive of a state of civilized society in which credit between man and man could possibly be avoided.

We think we have shown that in the absence of any law compelling a man to give credit, justice demands that payment should be enforced where credit has been given; and further, that if this were not the case, laws do exist compelling men to give credit; not statute laws, it is true, but laws far more potent in their operation than legislative enactments can be—the laws of production and distribution—laws which cannot be violated without inflicting a public injury, nor repealed but by the dissolution of civilized society.

If we have succeeded in establishing the justice of the collection laws to the satisfaction of the *Telegraph,* we have it with us in the opinion that exemptions beyond the mere demands of mercy cannot upon any principle be sustained. We would, however, much sooner go for the total repeal of all collection laws than for repealing them in respect to one-half of the community by large exemptions and leaving them in full force against the other half; for the latter course would be as unmerciful as if an executioner should begin to dispatch a criminal by chopping off his feet. It would be more humane to begin at the other end and chop off his head at once.

We had intended to notice in this connection the bearing of the collection laws upon the criminal laws, but the extensive field of inquiry already passed over admonishes us that our readers may be tired, if we are not.

SELECTIONS FROM THE SOUTHPORT *TELEGRAPH*

A NEW CONSTITUTION

[November 3, 1847]

Another election for delegates to frame a constitution for the state of Wisconsin is close at hand. It becomes therefore a matter of importance to consider what is to be done—whether, as a party, we shall make a selection of candidates, or whether party differences shall be merged and nominations made on grounds having exclusive reference to questions of constitutional import. We can think of no better mode of getting candidates before the people than our usual mode of party nominations, though we neither ask nor expect people to take candidates so nominated without a plain declaration of their purposes, should they be elected; but however the nominations may be made, or whoever may be nominated, we trust such instructions will be given and such pledges will be exacted as will make the business of the delegates to the second convention exceedingly simple and short. With the exception of two articles the mass of the people were unquestionably well satisfied with the late constitution. These exceptions were the article on banks and banking and that relating to the rights of married women and exemptions. During the canvass we heard of but little if any objections to other provisions of that instrument. It would seem, then, that the second convention could with propriety be restricted in its action to a revision merely of the late constitution; to an amendment of such portions only as were and are objectionable. From the discussion upon the subject the people of every county and district of Wisconsin, or at least a large majority of them, have doubtless decided in their own minds what particular amendments they desire. By making the matter plain at their primary meetings and by nominating and electing such men as may be pledged to carry out their wishes, the formation of a second constitution, instead of being a work of weeks and attended with thousands of dollars of expense, may be made the work of a very few days, at but a slight expense, whilst its adoption will be rendered a matter of certainty, and our entrance into the Union be secured at a comparatively early day. We say again, let the people in their primary assemblies for nominating candidates for seats in the convention be prepared to give definite instructions, so far as such can be given, and they will have a constitution expeditiously formed and made to their minds, while a failure on their part to do

this may have for its results a protracted session of the second convention and possibly the formation of a constitution as far from accordance with the popular will as the first, rendering, if rejected, the call of a third convention necessary.

Notwithstanding we are somewhat radical in our views, we think we are prepared to be satisfied with a constitution which would not be particularly objectionable to a conservative—or to a liberal-minded Whig. We do not care about having every point of our political creed embodied in a constitution. Our idea as regards a fundamental law is that there should be as little special matter in it as possible. Constitute properly the several departments of government, and confine their action within such limits as common republican usages have prescribed, and we shall be satisfied to leave the rest to the people, in whom we have an abiding confidence, and to whose decision we are at all times disposed cheerfully to submit. We are opposed to banks; but we should be willing to leave this matter open for the people in the state legislature. All that we should particularly desire would be a constitutional prohibition of special banking privileges. If there be banking at all, let all stand on equal footing in respect to privileges and liabilities. On the subject of married women's rights and exemptions of real and personal property from forced sale our mind is decided. We are in favor of the first, and of the most liberal provisions in regard to the last. But we care not if the constitution is entirely silent in reference to both, so long as the legislature may have the power to act in the premises. Indeed, considering the progressive state of the public mind on this and kindred subjects, we should prefer to leave this matter to state legislation, without constitutional privilege or restriction, believing that by this means we shall secure from time to time far more liberal provisions than could readily be secured if constitutional provisions always stood in the way of progress and reform. So we are willing to waive our radical views on these points so far as the constitution is concerned, and we have no question that a large majority of those who are, with us, radical in sentiment are willing to do the same thing. Our conservative and Whig friends, if they will consent to adopt the other principles and features of the late constitution, may make such modifications of these as suggested; but we give them due notice that in the state legislature, as soon as organized, we shall not only show fight, but shall continue the contest until the measures we seek, which we

know to be those of the people, and of popular rights, are fully triumphant.

NO UNION WITH WHIGS

[November 17, 1847]

We believe there is but little if any difference of opinion among honest Democrats at the present time with regard to the main features of the next constitution; and, indeed, we think there was less difference of opinion with regard to the last than was generally supposed. Democrats may have opposed the bank article of the late constitution, but it was not because they wanted banks; they may have opposed the exemption article, but not because of hostility to the principle; and they may have opposed the judiciary article, but not to defeat the important reform of electing judges. Details rather than principles created the difficulty; and it is these details upon which we think discussion has created harmony in the Democratic mind. A plain constitution, guarding against conferring special privileges, which shall administer the government equally and economically, and throw no obstructions in the way of reforms by the legislature, such as the popular mind shall from time to time demand, is what is desired. If we are right in the opinion that harmony exists in the Democratic mind on this important subject, our policy and duty are both plain. They are, in the first place, to discard all feelings of hostility and prejudice which the late distracting events may have created in our minds against one another. As we said before, we believe the discussions of the past year have brought the Democratic mind to a common ground and understanding on the subjects demanding their attention; any prejudices or hostilities therefore which are allowed to prevail must be purely selfish and in opposition to the public good. If there be any persons so wild, and perhaps there are a few, who from pride of opinion or any other motive are determined to be satisfied with nothing short of what the people have so emphatically condemned, we ask them in common charity and for their own sakes to forbear. They may pull down the pillars of the temple, but the fabric will fall with crushing force on their own heads. In the second place, let us preserve our organization unimpaired. A union ticket is desired by some. If we are right as to the feeling existing among Democrats, what possible good could arise from a union with our opponents? What sort

of union is desired? Our opponents are not presumed to think with us in the many important measures to be enacted; a union then, however it might assist to elevate men, could be productive of nothing but confusion of opinion, disunity of purpose, and consequent distraction and danger. We can see no possible good to arise from any attempt to unite in this matter the opposites which exist. If, as Democrats, we occupy the correct ground, any union which may be made is simply yielding our ground without any corresponding benefit. We are well aware that a prejudice exists against party organization and machinery, and many good Democrats have about come to the conclusion that no good can come out of Nazareth. But it is the abuse and not the use of our party machinery which has created this state of affairs, an abuse for which we are all in some degree responsible. As individual Democrats, we have our common views and purposes. But when have we as a party manifested our wishes and purposes to our representatives? We have been content to select them and leave them in profound ignorance of what was expected of them. Is it strange, then, that the representative should have gone astray, that men should have become disgusted with a party that accomplished nothing, and that our party contests should have degenerated into mere personal scrambles? This can be easily remedied. We always have a purpose to accomplish; we have now an important purpose. We have only then to manifest this purpose clearly and select men who are capable of fulfilling it, and we have accomplished fully the objects of our organization and secured the benefits which belong to and flow from the application of the Democratic principle. As on this, so on all occasions, let us keep our high purposes clearly in view, and party and party machinery will then assume the high position which belongs to them. We consider this matter peculiarly important at the present time. On the heels of our state organization come the elections which give Wisconsin her place in the politics of the nation. Any disorganization or wavering now will make us an easy prey at that time to the common enemy. Preserve then your organization, harmonize your views, and manifest your purposes, and all will be well.

LEGAL REFORM

[November 17, 1847]

As the time for holding a convention to frame another constitution is near at hand, now is the appropriate time to agitate such

measures of reform as the public interest demands. There are some changes and alterations desired which are so essential to improving the general welfare that they should be provided for in some shape in the fundamental law of the state. If there are legalized errors in the existing arrangement which work mischief and are promotive of wrong, the remedy should be pointed to in the constitution. Reforms, especially of a legal kind, are not easily effected by legislative action; of the truth of this the people have had abundant evidence in nearly every state in the Union. It so happens that the men who mostly control the action of legislative bodies are of that class whose interest does not lead them to simplify the law and make plain its complicated forms.

So far as we can judge from the indications of the public mind, we think we are warranted in saying that a large majority of the people desire a radical legal reform. It is true there are some careful spirits who profess great friendship for reformatory measures, but appear to think that great caution should be observed—that changes are only to be brought about gradually, and that the entire overthrow of all the unnecessary forms and fictions of the law must be the work of generations. That a long series of years is necessary to effect all the needed reforms, in order to ensure the public safety, is in our opinion consistent neither with sound philosophy nor with common sense. If truth be mixed with error, let it be unmixed, and the sooner the better for the cause of truth. No husbandman would deem it hazardous to his growing crop to exterminate the obnoxious weeds with all expedition; nor will any well-balanced mind fear the consequences of putting aside at once all the needless clogs and embarrassments in the administration of justice. Give us men who believe that now is the time to take the sure preparatory steps for the overthrow of the numberless useless formulas attendant upon the courts—practices which make a trade of mystification and enable an initiated few to practice on the credulity and live on the misfortunes of the many.

There should be an article in the constitution making it obligatory upon the first legislature under the state government to appoint a commission to simplify the practice and abolish all useless forms of procedure. The article in the rejected constitution relating to the revision of the statute laws of the state, etc., was insufficient to reach the desired object. The twenty-fourth section of the sixth article of the new constitution of New York contains what should

be embodied in the constitution of Wisconsin. It is as follows: "The legislature at its first session after the adoption of this constitution shall provide for the appointment of three commissioners, whose duty it shall be to revise, reform, simplify, and abridge the rules of practice and pleadings, and forms of proceedings in the courts of record of the state." This imperative duty imposed on the legislature of New York by the constitution is being fully carried out; the commission is now at work and will in due time celebrate the advent of legal common sense by making a bonfire of the legal fictions and forms which had their origin in the dark ages and which have rendered legal proceedings a matter of uncertainty, mysticism, and doubt, and saddled the people with enormous expenses.

To instance only one of a thousand absurdities which have obtained a place in the practice: It is customary to make a half dozen or more counts to recover on a simple promissory note. These wordy documents, called declarations, are not unfrequently extended to more than twenty folios—a length greater than the Declaration of American Independence, which sets forth fully the causes of our separation from Great Britain. The friends of legal reform propose to do away with all this verbose nonsense and let the plaintiff's declaration consist of a simple copy of the note on which he seeks to recover. Those who are learned in legal science tell us that there was once a necessity (in olden time) for using different forms of action; but it is now admitted by the most candid that a necessity for this complex system no longer exists. The state of Missouri has recently made a general sweep of the legal rubbish which has encumbered the courts, and substituted simple forms of action adapted to the common sense and plain understanding of every man; and the salutary results of the reform are now being realized. Other states have begun to act in the matter; and we trust Wisconsin will not fail in adopting measures to reform many of the legal abuses which have for ages wronged mankind.

RESOLUTIONS OF RACINE COUNTY DEMOCRATIC CONVENTION

[November 24, 1847]

In accordance with the call of the county corresponding committee the delegates from the several towns of the county assembled in convention at the place designated.* * *

The committee on resolutions, having been called for, came forward and presented the following:

That, WHEREAS, Under ordinary circumstances and on ordinary occasions we consider the principles and purposes of the Democratic party sufficiently before the public mind without the necessity of a special exposition; yet on this occasion, when new and unsettled questions are up for action, we deem it a duty to the people at large of Racine to lay down briefly and clearly the results we desire to accomplish by this nomination; therefore

Resolved, That in a constitution for the state of Wisconsin there are essential principles to be recognized in order to secure the objects of good government and the happiness and prosperity of the people: That among the most important of these principles which it is proper to incorporate into the fundamental law of the state are the following:

First. The executive, the legislative, and the judiciary departments of the government should be made elective by the people; the elective principle should be fully recognized in relation to all offices of public trust; the patronage of the executive or any other appointing power should be circumscribed within the smallest practicable limit.

Second. The power to contract state debt other than such as may be necessary for the support of government should be prohibited; nor should the credit of the state be loaned to individuals or corporations.

Third. The constitution should recognize the education of the people as the sustaining element of rational liberty; and hence a liberal system of common school instruction without reference to sect or creed should be provided for.

Fourth. All special corporations possessing banking privileges or enjoying any exclusive monopoly should be prohibited.

Fifth. The legislature should possess full power to enact such exemptions of personal and real estate as the popular voice may from time to time demand.

Sixth. The single district system for the election of members of both branches of the Legislative Assembly should be provided for in the constitution.

Seventh. The constitution should require the legislature to appoint commissioners to revise the laws to simplify the practice, and expurgate the useless forms and fictions which now encumber legal proceedings.

Eighth. No professions or classes of men should ever enjoy any exclusive rights and privileges by any law of the state.

Ninth. The constitution should provide for an economical government, and the salary and per diem of all public officers should be so moderated as not to tempt to posts of honor for the mere purpose of gain.

Resolved, That the Democratic nominees, as the representatives and exponents of these measures, are entitled to the cordial support of the Democratic party; and all personal differences being laid aside, we will enter the conflict with our common foes, united in the defense of the principles and measures we profess to love and cherish.

The above resolutions being read were on motion unanimously adopted.* * *

RESOLUTIONS OF RACINE COUNTY LIBERTY CONVENTION

[November 24, 1847]

At a county convention of the Liberty party, held in Southport, on the twentieth instant.* * *

The following resolutions are put forth as embodying upon the points presented the sentiment of the convention and the party:

Resolved, That we believe with the first section of the Bill of Rights in the last proposed constitution, "that all men are born free and independent, that all power is inherent in, and all government of right originates with, the people, is founded in their authority, and is instituted for their peace, safety, and happiness."

Resolved, That the Ordinance of 1787, under which we are to form a state government, allows us to do it upon this condition: "*Provided,* the constitution and government so to be formed shall be republican and in conformity to these articles of compact."

Resolved, therefore, in the language of James Madison, That "it is essential to such a republican government that it be derived from the great body of society, not from an inconsiderable proportion, or from a favored class of it"; and that it "derive all its power directly or indirectly from the people"; that, in the language of Thomas Jefferson, "the true foundation of a republican government is the equal rights of every citizen in his person and property, and their management."

Resolved, That it is not in conformity to the principles contained in those article of compact to deprive a portion of the "free inhabitants" of this territory of the exercise of the elective franchise, and thereby stigmatize them with the badge of Slavery, which was forever prohibited by said article of compact, otherwise than in the punishment of crimes whereof the party shall be convicted. Neither is it in conformity with the preamble to said articles of compact, which declares they were made "for the purpose of extending the fundamental principles of civil and religious liberty, which formed the basis whereon these republics, their laws, and constitutions are erected, to fix and establish those principles as the basis of all laws, constitutions and governments which forever hereafter shall be formed in said territory," as "articles of compact between the original states and the people and states in said territory, and forever remain unalterable, except by common consent." Therefore

Resolved, That to deprive any portion of the people of the elective franchise, or of their proportionate share of electors or representatives, or to impose taxation without representation, is antirepublican; and no such constitution should it be proposed or adopted by the people of the territory, ought to be accepted by Congress, as the United States are bound to "guarantee a republican form of government to every state in the Union."

Resolved, That to make or vote for such a constitution is to violate the fundamental law of the land, to deny the equal rights and equal brotherhood of man, to have respect unto persons, to make void our republicanism and belie our democracy, to libel with disgrace the man whom we have declared equal, which is downright hypocrisy, and indirectly to censure the God who made him for the color he gave him, which is downright presumption.

J. B. JILLSON, Secretary

COLLECTION LAWS—THEIR INJUSTICE

[December 24, 1847]

We admit that justice requires the payment of debts; and no law can add to, or take from, the moral force of the obligation. The only question is how are the demands of justice best subserved.

What justice asks is simply the payment of the amount of any indebtedness contracted, with reasonable damages, such as it may be apparent the creditor has suffered from delay.

The law of imprisonment for debt certainly answered not this demand. By depriving the debtor of his personal liberty he was of course deprived, so far as the matter depended upon the labor of his hands, of all ability to pay. About the only result attained was the gratification of an unworthy feeling of revenge on the part of the creditor, while equally unworthy feelings were engendered in the mind of the debtor—the debt, in a great majority of instances, forever remaining unpaid. Instead, then, of a principle of justice being subserved, the malignant passions of our nature were, alone, fed and strengthened.

Laws providing for summary process against *all* the property of the debtor go beyond the requirements of justice; for here in a great majority of cases you compel him to pay, in the forced sale and confiscation of his effects, far more than the amount of the demand against him—to say nothing of the destitution and suffering you may be creating, as regards the debtor and those who are dependent upon him.

Laws which may be promotive of delay in legal proceedings against the property of a debtor are fraught with injustice on the other side and rarely result in anything but pecuniary injury to all parties, except lawyers and judicial officers.

Exemption laws, although confessedly founded on a principle of mercy alone, do not so much interfere with the proper development and action of the principle of justice, as laws of the character first stated. The main objection to them is that by releasing men in certain cases only from legal liability to pay their debts, they are under the operation of the law made forgetful of their responsibility in a higher and more important sense. You weaken in their minds generally the force of the moral obligation which exists.

And here, so far as the principle under consideration is concerned, we find the leading objection to all collection laws, of whatever character, or however framed. They cannot be made to subserve the ends of justice. Human ingenuity and wisdom have been and may be tasked in vain to accomplish this. The result of all efforts of this character has been but to introduce a legal standard of action for men, which must, in the nature of things, be lower and less operative than the moral standard which would otherwise, of necessity, be erected. The controlling sentiment, under the existing order of things, is that responsibility extends no further than the law. If the payment of any liability may be evaded without

coming in direct conflict with statutory provisions, no matter how much fraud is perpetrated, the individual, so acting, is rather commended for his shrewdness and cunning than rebuked for his dishonesty, and by his successful knavery elevated rather than lowered in general public estimation. And if through the medium of a bankrupt law a debtor discharges his legal obligations, he is perfectly satisfied, and the community too, that his responsibility in the premises is at an end; and should he never pay his debts, however abundant his means, he is held to no accountability and may even pass for an honest and honorable man!

All this is a very natural result of the system by which the dealings of men with each other are attempted to be regulated, and exhibits the insecurity and rottenness, in a moral point of view, of the foundation upon which credit is made to rest. A sentiment of justice, it is quite apparent, has no existence, as a general thing, in such a state of affairs. It is entirely subverted—and subverted, too, by that very system of law, the necessity of which is mainly contended for on a ground of justice.

Do away your laws relating to debts and bankruptcy—throw away your legal standards of right and wrong in regard to matters of pecuniary deal and obligation; let integrity of character be the sole basis of credit— and you will soon find a moral sentiment and discrimination springing up in community, the increasing strength of which, through its cultivation, will furnish a better security for the honest and faithful discharge of mutual obligations and for safety in business transactions, than any legal system of coercion or regulation that human wisdom can devise. A sentiment that will excuse no violations of the principle of justice and will forever hold a man responsible, according to his means, for the payment of his debts—a sentiment which cannot be set at naught or disregarded, except at the expense of personal interest and the almost irretrievable loss of credit and character and which, therefore, will furnish the strongest possible motives for the general cultivation of principles of honesty and fair dealing and lead more than all things else to circumspection of conduct and elevation of individual and public character.

Collection laws are not only unjust as between debtor and creditor, but also as regards the community, because, in the prosecution of suits, hundreds—we may say thousands—of men in our territory alone are annually called from their homes and business to act

in the capacity of witnesses and jurors. And this, not unfrequently, at great sacrifice of interest and personal convenience and comfort. Nor does the evil stop here. From the positions they are made to occupy in respect to litigant parties, however honestly and conscientiously their duty may have been discharged, they cannot avoid becoming subjects of ill-feeling on the one hand or the other, nor, as a legitimate result, avoid being frequently involved in quarrels and difficulties leading to the worst consequences as regards individual and neighborhood pecuniary and social interests and welfare —all which, if possible, would most gladly have been avoided.

Here is a feature of injustice which should not be overlooked in the consideration of the question, but which we barely suggest for the reader to enlarge upon in his own mind.

We have confined ourselves in this article to a slight and imperfect discussion of the justice of the collection laws. Other departments of the subject will hereafter be considered as we have room and leisure.

OBJECTIONS TO THE CONSTITUTION

[February 18, 1848]

MR. EDITOR: A new constitution is submitted to the people of Wisconsin, on which they must shortly vote, and it becomes us all to reflect upon the provisions of the instrument, that we may vote understandingly and with a good conscience.

I am opposed to the constitution and I give you my reasons: First. It asserts that all men are born equally free and independent and have certain inherent rights; among these are life, liberty, and the pursuit of happiness; to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed; and yet in the teeth of this declaration, the constitution, in article third, under the head of "Suffrage," virtually denies that men are "equally free and independent"; it debars large portions of our fellowmen from "inherent rights" and endeavors to institute a government not deriving its powers "from the consent of the governed." A constitution professing gratitude to Almighty God for our freedom and at the same time committing so great an injustice against natural rights and the freedom of our fellow beings, children of the same God with ourselves, never can be voted for by any person without bringing on himself the guilt of falsehood and hypocrisy.

Second. In the declaration of rights the constitution says the jury "shall" have the right to determine law and fact; the right of consultation and petition "shall" never be abridged; the right of trial by jury "shall" remain inviolate; excessive bail "shall" not be required. But in section 9 of that article it asserts that every person is entitled to a certain remedy in the laws and he "ought" to obtain right and justice freely, without being obliged to purchase it. Ay, indeed! Then why so suddenly discontinue the use of the powerful imperative "shall"? If every person "ought" to obtain right and justice freely, without paying for it, why not say he "shall"? The reason will be found in article 7, section 18, where that potential word "shall" again occurs, as follows: "The legislature shall impose a tax on all civil suits commenced or prosecuted in the municipal, inferior, or circuit courts," that is, in all courts to which persons resort for civil remedies in the laws for all injuries or wrongs which they may receive in person, property, or character, and where the declaration of rights says they "ought" to obtain right and justice freely, and without being obliged to purchase it. Yes, but, the framers of the constitution may reply this tax upon lawsuits is not for obtaining right and justice, but only for the payment of the salaries of the judges. As well might they say that the fee paid to a lawyer is not paid for obtaining right and justice, but only for the payment of the expenses of living of the lawyer and his family, or that the wages paid to a workingman are not paid for obtaining his work, but only for the payment of the expenses of himself and family. Who are these judges whose salaries are to be paid by suitors at law? They are public officers of the highest authority, instituted for the preservation or security of the rights in person, property, and character, of the entire people. A man who never goes to law at all has the advantage of the protection of laws and judges in the security which he enjoys in person, property, and character from the constitutional existence of laws and judges, by means of which a check, it is asserted by the friends of the system, is imposed on the wrongdoer. Yet the whole burden of supporting this magistracy is, or may be, under this constitution thrown upon the persons who may be compelled to enter court for the assertion or recovery of right and justice! The injured suitor, in addition to paying his own lawyer, in addition to paying for his writ and the other court charges and fees of the officers, in addition to paying his own witnesses, losing his time, and being vexed by many cares in

bringing and prosecuting his claim before the court for the recovery of his right, shall also pay a tax for obtaining justice, which the legislature "shall impose." Why not say also that suitors shall pay the wages of members of the legislature and the other public officers? As much justice would there be in that, as in requiring them to pay the salaries of the judges. I know there are men who are of opinion that justice should be sold pretty high. "Make people pay high and burn their fingers when they go to law, and they will keep out of it"; so say many persons. But the framers of the present constitution have not professed to be of that opinion. On the contrary, they have expressly said right and justice "ought" to be obtained freely and without being obliged to purchase it. So also they have said all men are born equally free, yet they shall not be equally free. All men "ought" to obtain right and justice freely and without paying for it; but they shall not so obtain right and justice, but shall pay a tax which the legislature shall impose. A tax not limited; it may be any amount that the legislature chooses to impose —so high as to fall lightly on the rich, but forever to debar the poor man from the ability to enter court as a suitor! Shameful that constitution-makers should be so near-sighted or false to their own professions, and that a constitution should be submitted to people, so contradictory of itself. No one can vote for this constitution who is not in favor of the principle that a tax shall be imposed on right and justice. The constitution says it shall be, and the legislature must pass a law that way, and never can be without legislation imposing a tax on justice and right.

Third. Article 1, section 17 declares that "privilege" of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws. The privilege! What is a privilege? Is it not a special favor—some boon, power, or mercy conferred? Is it not a term used in contradistinction to right—as rights and privileges? Is not the right to a home as sacred and inalienable as the right to life? This section contemplates the exemption of a certain amount of personal property, not of the home. If the right to a place is secured to a man, he can earn and enjoy the comforts of life, besides paying his debts; the exemption merely of personal property to a limited amount will not enable him to pay debts and sustain himself. The friends of the homestead exemption by voting for this constitution place exemption on the footing of privilege, not of right; and they descend from the exemption of the homestead to dollars and

cents. For my part, I would rather have no exemption clause in the constitution than that which is there now.

Fourth. In Wisconsin, banks are unpopular, and the homestead exemption is popular. Yet the recent Old Hunker convention, in article 12, section 5 says the legislature may submit to the voters at any general election the question of bank or no bank. Why did the convention not submit to the voters the distinct question, homestead or no homestead? This shows that they were more willing to do for banking than for homestead exemption. They have hopes that by panics and inflammatory appeals they can get a batch of banks by capitalists in Milwaukee addressing circulars to capitalists in other parts of the state, to make a logrolling election for representatives—give us a bank, and we will give you a bank. Is it not easy to foresee the corruption thus to be introduced into elections? Had they believed the homestead unpopular, they would have submitted the distinct question at once, to be voted down by the people; but they were afraid it would carry, and therefore they smothered the subject and have introduced the delusive article which I have mentioned instead of a homestead exemption.

The constitution is filled with other wrongs. But I have no time to add more.

ANTI-WRONG

ANTICONSTITUTIONAL MASS MEETING AT BURLINGTON

[February 18, 1848]

At an adjourned mass meeting of the citizens of Burlington and vicinity, held at the Academy in said village on the fourteenth of February, 1848, for the purpose of discussing the principles embodied in the constitution now before the people: The meeting was called to order by the chairman, when the committee previously appointed submitted the following Preamble and Resolutions, which were severally considered and adopted with great unanimity.

PREAMBLE

WHEREAS, Our delegates in convention assembled have adopted and submitted to the people of this territory a constitution, with a view to the formation of a state government; and while we would pay all due deference to their opinions embodied in that instru-

ment, we regard it as our privilege and duty to express our views upon the subjects embraced therein. Therefore

Resolved, That in the prohibition of any portion of our free-born citizens from exercising the elective franchise we recognize a principle adverse to the dearest rights of man, in direct violation of the spirit of all free institutions, and which in this day of progression and reform should meet with a signal and effectual rebuke from the people.

Resolved, That while we would approve of the organization of a separate supreme court, we would express our decided disapprobation to the odious system embodied in the seventh article, entitled "Judiciary"; and to ensure to every person his or her rights in law and equity we must insist that the supreme court shall not in any manner be identified with the courts below; and in compromitting this principle we hazard one of the dearest rights of a free people.

Resolved, That in our opinion the sale of any portion of the school lands is fraught with the greatest evil and ere long will prove detrimental to the best interests of ourselves and our posterity. Facts have almost invariably demonstrated that when any portion of the people's money is placed in the hands of agents with a view to the accumulation of interest thereon, they have not only been disappointed in its accumulation but robbed of the principal.

Resolved, That in appropriating any portion of the school fund to the support of academies we are departing widely from that philanthropic principle which should ever stimulate us in our efforts to elevate common schools; and the tendency will be to nourish aristocracy and engender a deep and abiding feeling of hostility in community towards these institutions.

Resolved, That while we would not deprecate the institution of academies in our midst, we must protest against the appropriation of any portion of the school fund to their use, believing that all such efforts should be sustained by individual aid.

Resolved, That we are in favor of a homestead exemption to be incorporated in the constitution, and that our delegates in convention in rejecting the same and refusing to submit that question to the people for their decision have failed to secure the unfortunate debtor from the iron grasp of the merciless creditor, and have given us the strongest proofs of their opposition to the natural rights of man to some portion of our common heritage.

Resolved, That we deem the errors in the constitution now before us so very palpable and so decidedly averse to our future pros-

perity as to demand at the hands of the people its unanimous rejection, and that we will use all honorable means to secure its defeat.

Resolved, That the proceedings of this meeting be signed by the chairman and secretary, and transmitted to the press for publication.

NATHANIEL DICKINSON, Chairman
GEORGE JONES, Secretary

MERITS AND DEMERITS OF THE CONSTITUTION

[February 18, 1848]

We expressed the opinion in our last that the constitution would meet with but little if any opposition, and would beyond question be accepted by the people. Since then we have had evidence that there is not the unanimity on the subject we supposed. The communication of "Anti-Wrong," on the outside of our paper, comes from a gentleman of influence, who no doubt speaks the sentiments of many. There will also be found, in another column, the proceedings of a mass meeting of citizens of Burlington in opposition—and this is but the beginning. What may follow we know not, of course. We think, however, the constitution will be accepted, not because it is unobjectionable, but because there is a great desire to enter the Union, and because but little hope will be entertained of getting one any less objectionable than this.

That there is good reason for complaint no opponent of the constitution is any better aware than ourselves. The broad declarations in the bill of rights that "all men are born free and equal," that "government derives its just powers from the consent of the governed," etc., contrasted with the action of the convention in refusing suffrage to a portion of our people, are rank inconsistency, if nothing worse. But it must be recollected that so far as the convention could have any knowledge of the wishes of the people, they acted in accordance with those wishes and are therefore not censurable. The main error in regard to this matter is with the people. If we could hope for a different result in the formation of another constitution immediately, we should oppose the one now presented, on this ground; but by the time the people are willing to adopt the just principle of free suffrage, we may have adopted and worn out this constitution and may be ready for a new one. Besides, the

legislature is authorized, when there is evidence that the people desire it, to extend suffrage to all; and in view of the late expression of the people on this subject, we know not how more could reasonably be asked of a convention which desired to frame a constitution in accordance with the popular wish.

As to the constitution of the judiciary, taxing suits, etc., differences of opinion will of course exist, and some would be disappointed, however this might be framed. Experience alone will correct the errors which may be found to exist. The objections of our "Anti-Wrong" friend are forcibly urged and will attract attention. The objection stated by the Burlington meeting we deem less important. Whether the supreme court should or should not have an entirely independent organization is a question, the decision of which in convention turned as much upon expense as upon any other consideration. For the first five years only is that court required to be constituted of the circuit judges. At the expiration of this time the legislature is authorized to provide for a separate supreme court organization; and it will be done, if the people require it. We see nothing objectionable here.

The article on education may be liable to the objections urged against it. In regard to the impropriety of making provision at the common expense for the establishment of select schools or academies the sentiment of our Burlington friends does not differ from ours. As respects the sale of the school lands and the use of the funds, the results apprehended can best be avoided by watchfulness on the part of the people and care in the selection of their agents. Let honest and judicious men be selected to manage these matters, and no fears need be entertained as to results.

Our views in regard to exemptions in the constitution are known. We yield to no man in our desire for the enactment of liberal exemptions, but we have as yet seen no good reason urged why they should be specifically provided for in the constitution, in preference to being left to legislative action. There is a difference of opinion as to the wishes of the people on the subject; but it cannot be denied that there are good grounds for supposing, in view of the vote on the late constitution, that the people did not desire provisions of the kind embodied in that instrument. In view of this fact we think it would have been hazardous to engraft this feature on this constitution. By leaving the matter open to future action they have done all that could reasonably be asked—so at least it

strikes us—and we call upon all friends of exemption to unite in securing at the hands of the legislature what they desired at the hands of the convention.

We do not sustain the constitution because it meets our views in every particular, but because we think it quite as good as can now be hoped for. Experience and progress will enable us to overcome and eradicate its errors; and in the meantime we shall enjoy the advantages to be derived from state government.

SELECTIONS FROM THE WATERTOWN *ROCK RIVER PILOT*

A DEMOCRATIC APPRAISAL OF THE SITUATION

[November 3, 1847]

We publish today the law of the late special session in relation to the formation of a state government in Wisconsin; and as the subject involves the most important interests of our people, it may not be amiss in us at this time to reflect somewhat upon the course which the Democratic party should pursue to ensure success in the approaching political contest, and to give our views of the principles which should be incorporated into the new constitution.

But a few days will elapse before the party nominations will be made; and on the twenty-ninth of the present month they will be called upon to discharge an important duty—the election of delegates who are to frame for Wisconsin a state constitution, the political character of which will be determined in the choice of delegates. And as the spirit of the constitution will be experienced in the laws and influence the character of our state institutions, it should be the desire of every Democrat to see incorporated into it the fundamental principles of the party, to insure which requires the most guarded selection of candidates as well as the most united support of the party at the polls. The first care of the party should be to introduce into its primary meetings a spirit of harmony and concession, for without it the labors of the party will be futile and its dearest principles lost sight of in personal dissensions. The doors should be thrown wide open, and every Democrat be invited to assist in advancing the cause of Democracy, which, as it professes equality and justice to all men, should receive from the whole party a hearty support; and each member should feel the importance of individual influence in harmonizing and strengthening the party through which alone its principles will be established.

The differences of opinion which the late constitutional controversy excited should now cease to exist, and the whole party be again united in its strength in support of first principles. That there should be differences of opinion, even among Democrats, as to what should be embraced in a constitution and to what extent ultra party principles should be incorporated, is expected; but it does not

follow that there is a consequent division of opinion upon the principles themselves. The defeat of the late constitution cannot be attributed so much to difference of political sentiment as to the policy of incorporating into our fundamental law ultra party measures, upon which differences of opinion have always existed even in our own ranks. Our constitution should be entirely free from legislative provisions and, while it forms a safeguard against excessive legislation, by fixing the limits of corporation enactments and guarding against improper appropriations of the public money, should leave to the people through their representatives all matters of legislation. Had this course been pursued by the framers of the late constitution there can be no doubt but what it would have been adopted by the people. While the party unites in the support of general principles, individual members may advance new theories which, though they may be well founded, are not readily incorporated into the party creed. It is from an untimely enforcement of these theories that party differences arise; and the policy of Democrats should now be to adhere strictly to the old landmarks of the party, leaving the development of new theories to time and circumstance.

The new constitution we hope to see founded upon Democratic principles; and as we find many of them embraced in the rejected constitution, we shall refer to them, in the hope that the principles involved will be sustained by the party in the approaching contest.

The article upon elective franchise should remain unchanged. The true policy of our government is to extend a liberal hand to our adopted citizens and assimilate to the utmost their views and interests with our own. To deny our foreign population the right or to throw any unnecessary obstacle in the way of their enjoying the privilege of the elective franchise, would be not only an act of gross injustice but prejudicial to the best interests of the country.

There should be a system of free schools provided for; and as it is in this that we mark the enlightened progress of a nation, so let our system of schools place us first in the scale of intelligence and liberality. Let the system extend its advantages to every child within our limits; and let it be free from sectarian influence. The article upon this subject in the old constitution we have never heard objected to; and we believe that a similar provision will be looked for in the new constitution.

Upon the subject of banks the constitution should be particularly guarded. No license should be given to the legislature to

authorize any system of banking which shall not first be submitted to and approved by the people.

The article on finance and state debt should not be materially altered. It provides for raising revenue by an equal tax; is against any appropriation of money from the treasury unless in pursuance of law; and expressly provides that "the credit of the state shall never be given or loaned in aid of any individual association or corporation"; and is against the contraction of burdensome state debts. This subject is of vast importance to our people and one in which we should profit by the sad lesson which the western states have experienced from loose legislation.

The legislature should be of sufficient size to represent the various local interests of the state. We are in favor of a large representation, believing that it conduces to fair and honest legislation.

The judiciary should be composed of a supreme and district courts—the judges to be elected and receive liberal salaries. The article upon this subject in the late constitution was defective perhaps in some particulars, but in the main we believe it to have been generally approved of.

The subjects of exemption and the rights of married women are strictly matters of special legislation and should not be embraced in a constitution; and though we hold to the doctrine of exemption, we wish to see it carried out through legislative enactments. If similar provisions are again to be incorporated in the constitution, they should be presented as separate articles and voted upon as distinct propositions.

All officers should be elected by the people, with moderate salaries and short terms of office.

The convention should provide for the appointment of one or more commissioners to revise the laws and simplify the practice in our courts of record.

The above are some of the features which we deem essential in a good constitution; and we shall take occasion again to allude to the subject.

LEGAL REFORM

[November 3, 1847]

To the Editor of the *Pilot*: The position which almost the entire press of the territory has assumed on the subject of legal reform is an assurance that ere long the "feeble echo of distant ages—

the treasured wisdom of all the old women of antiquity" will be estimated at its proper value in Wisconsin. The present is a generation eminently utilitarian and not at all disposed to respect the institutions of bygone days merely because time has respected them. People are satisfied that abuses, however long they may have existed, or by whomsoever they may have been established or countenanced, are yet abuses, and as such should not be tolerated. When branches lose their vitality and can no longer give beauty or vigor to the parent stem, the halo of years should not be allowed to hide them from the pruning knife of the reformer. But it is prudent to examine well before we strike—to be sure that we lop off withered branches or useless excrescences, not healthy and vigorous shoots.

That our whole judicial system and particularly the practice in our courts calls aloud for reform is generally admitted, but the measure of reform demanded by different classes of individuals varies as infinitely as their circumstances or their minds. A portion of the "profession" (among whom ex-Commissioner Hill of New York occupies the most conspicuous position) stand aghast at the bare thought of having the "wisdom of ages" tumbled about their ears, forgetting that although the "venerable pile" may be prostrated, we shall have all the materials of which it is composed, and that if we cannot raise a more convenient and desirable structure, we can at any time reërect the quaint old building with its feudal columns, gothic arches, and unexplored labyrinths, together with all and singular the appurtenances, fictions, cobwebs, and glorious uncertainties thereunto belonging. While they admit the necessity or rather the desirableness or expediency of reform, they are fearful of the consequences that may result from the upturning of even matters of form so firmly established. And their fears are not entirely without foundation.

In our zeal to reform we are so apt to mistake change for improvement—destruction for reformation— and in legal science forms are so closely united with principles, verbiage with golden fruit, that the task of the reformer, allowing him to possess a clear eye and a steady hand, is arduous and delicate in the extreme. History demonstrates that it is infinitely easier to pull down than it is to build up. The world has never been in want of "architects of ruin," while alas, the list of beneficent creative reformers is very short indeed. It is a source of wonder to the intelligent, unprofes-

sional observer that while such great improvements have been made in the mechanic arts, that while medicine, chemistry, surgery, and almost every branch of natural philosophy have been progressively improving, the science of law has been standing still—a monument of the past, covered with the dust of ages. But when we consider that innovation is so directly at war with certainty (one of the most desirable objects of the law) we cease to wonder that so few changes have been made during such a long period as that which has intervened between the "time whereof the memory of man runneth not to the contrary" and the present.

A great English judge, one who is considered "authority," has said that "as circumstances alter, things themselves should alter." We at this day are very differently circumstanced from the English in the days of Henry III; and yet the practice in our courts in this our day and that of the courts of His Majesty in his day (if Bracton is to be believed) are not very dissimilar. It could hardly be hoped that a system arising in a remote and, comparatively speaking, barbarous age—when the true object of government was not understood—when legislative power was not at all defined—when the parliament was an assembly of "barons" who "sealed" with their seals because they could not "sign" with their hands, assembling when the exigencies (generally warlike) of the kingdom required it, or when they pleased—when the clergy were judges and ex officio by necessity legislators—and when knowledge (the press not having yet illumined the world) was to the people a sealed book—we say it could hardly be hoped that a system arising at such a time and under such influences could be all that should be desirable in Wisconsin in the nineteenth century. Yet the voice of the past should ever be heard with attention and respect; we should not hastily or pertinaciously throw aside everything which at first sight may appear to be rubbish. Truth sometimes assumes forms which make its identity questionable. We often find it the nucleus of a mass of error, lending a beauty and vitality to what would otherwise be deformity and death. Yet still it is the jewel; and our duty is to separate it from the dross with which design or accident may have surrounded it.

One of the most questioned of the New York proposed reforms is the abolition of the different forms of action or, in other words, the consolidation of all the forms—debt, covenant, assumpsit, trover, trespass, etc.—into one—the action on the case. But it will be

seen that this is only extending a principle incorporated with the common law by the 13. Edward I. stat. 1, generally called Stat. Westminster II. Previous to the enacting of that statute many cases had arisen, to classify which had sadly puzzled the profound legal minds of the times. They (the cases) did not belong to any of the established forms of action; and the maxim, that "the law will not suffer an injury without affording a remedy," was in such cases a dead letter; for although the right of action was admitted, yet what action could be maintained was a question too profoundly complicated for the largest wigs in the kingdom to decide. The interference of the legislature however cut the Gordian knot, and Chitty informs us that "to this statute the copious production of new forms of writs and the great encouragement and frequency of actions on the case so infinitely various is to be attributed." Now, the New York reformers propose to do nothing more than extend to all cases what the Stat. Westminster II. extended to an "infinite variety"; and pleaders have no just cause for grumbling because under the new system they will have to "declare" the facts as they exist in all cases, as they do at present when they bring a special action on the case.

There are few subjects of more importance than that of legal reform, and none which will require such a rare combination of firmness and caution, learning and good sense to carry it to the proper point and no further. Some things we may with comparative impunity pull down, disarrange, and rearrange to suit our tastes or our caprices; but in matters with which the well-being of society is so intimately connected we should "be sure we are right" before we attempt to "go ahead" a single step.

The time is near when we shall have to act on this and other questions of the first importance. Great reforms are needed, and great changes we have no doubt will be made. It is, however, consoling that even a change in nearly all of our judicial affairs can hardly fall short of reform.

HOMESTEAD EXEMPTIONS

[November 24, 1847]

A week's absence from our post has laid us under obligations to several of our friends who have addressed us upon political topics; and as their communications remain unanswered we have

taken the liberty of making a public allusion to such matters as most directly relate to the position of the *Pilot.*

In our fifth number we gave our views of the duty of Democrats in the approaching election and made allusion to what have been termed the objectionable articles of the late constitution. Our remarks, whatever may have been the construction put upon them, were intended to strengthen and maintain, not weaken or yield, the great principles of constitutional reform which have been submitted to the care of the Democratic party in Wisconsin. The subject of homestead exemption has ever been regarded by us as one of the first reform principles of the age; and instead of being an experiment, is but justice long deferred. To insure safety to man and property there must be a first or protecting power—a head or government which maintains itself in the virtue of the community over which it extends. The principles of an enlightened government are simple and leave, without unnecessary restraint, the energies of its people free and unshackled. Such is our own government; and it is in the liberality of its laws and the equal protection which it extends to all men that our government receives its strength. The public domain is man's heritage, it is true; but man is so constituted as to require the restraint of government, which cannot be enforced by isolated communities. Hence the necessity of a general government which unites in its support a community of interests. "If a man has a right on earth, he has a right to land enough to raise a habitation on. If he has a right to live, he has a right to land enough to till for his subsistence." This principle is true; and were society differently constituted, the earth, the natural inheritance of man, would afford to mankind the comforts, joys, and beauties which God designed for all. Were all men virtuous, restraining laws would be unnecessary, and every man would be left to the free enjoyment of the soil to the extent of his capacity and wants; but as it is, we find it necessary to throw the arm of law around the possession of, and give formal title to, what is man's natural right. To help what cannot be remedied has brought forth the principle of homestead exemption; which, though it does not concede the free right to soil, gives to each proprietor a certain amount of land as a homestead, of which he can only be voluntarily deprived. This was a principle in the late constitution and one to which we did then and do now give a hearty approval. The principle is right; and we hope to see it reduced to practice. It should, perhaps, be

embraced in our constitution; but the extent to which it should be carried is more properly a matter for legislative provision, where the people can more readily carry out their wishes in regard to it.

The subject of exemption is one in which a deep interest is felt. We have received several communications upon the subject, all of which breathe a warm interest in the success of this reform; and the following letter, which we received from a Whig for whose honesty and good judgment we have the highest respect, is a fair exhibition of the interest felt in this matter by our people generally:

Your last number has just come to hand, and I have read it with more of intense interest than I often feel at the perusal of Democratic papers. I am glad of your radicalism and only regret that you have not a little more of it—though not that it fails in degree, but that it covers too little ground. I am afraid that the fate of the old constitution is likely to lead your party to waver in their support of positions, for the maintenance of which they ought to rally their whole strength and stake their destinies on their success. I am sorry to see you give way that one foot on the exemption. That foot of ground conceded—the exemption of the homestead by constitutional provision abandoned—may lose the policy and its immense benefits for another generation, and consign that generation to yet many years of arduous struggle to obtain what ought to have been enjoyed without hindrance from the beginning of time. I know that in its constitutional aspect it is a momentous measure of reform and one for which we are not positively certain that the public mind is fully prepared. But is it not your duty to adhere firmly to that position, the expediency and even the stringent necessity of which has been demonstrated by the history of half the suffering that the world has endured? I know that the patient old world is becoming restive and revolutionary—that the time when reforms taxed one generation with the pangs of their birth, and another with the anxieties of their childhood, has passed away—but I insist, on the other hand, that in regard to this reform, even in this age, the wealth of the country has its victim within its hold, that it is not in the nature of power to relax, and that if there is not danger of defeat by wavering or delay, there is, at best, a certainty of a protraction of the struggle unless the whole ground is taken now that can be, and all is held that is taken. I hope, however, that your party is a little in advance of you on this point—or rather, that when the crisis comes, your party will manifest more firmness than it exhibits now. Indeed, I submit it to you, if the place left in the old constitution by the expulsion of the homestead exemption would not appear to be a rent—a great chasm—a place where a great and manifest good had been standing, and been moved away, and place made for a dark and discouraging void. I know that it would not be your hand that would strike it out, and I hope it will not be yours that would lie idle when it were stricken out—though your determination may seem to waver now when the catastrophe is distant and attention is diverted to the salvation of other reforms.

I suppose you wish to save all you can of the best and most attainable of the old constitution. Well, except in one or two respects, it was a glorious instrument and is glorious even now when trodden down. Its pearls gleam out now from the dust—and brighten from being trodden upon—and would even though it were for ages. And it may be necessary to relinquish one good thing to save others. But is it not the duty of reformers to test that necessity to the utmost? Is it not their duty to calculate closely the extent of their influence and the nature of their prospects, lest they submit to a mere difficulty that seems a necessity? But do you believe that there is any such necessity? All that has been attained of the policy is but the result of a day's labor—and

another day's exertion would convert the necessity into a difficulty. Another day's lift at the wheel would raise the cause to a position of perfect, undoubted practicability. Would not the prize be cheap, immensely cheap, at that? It is worth more than you, and I, and all of us—and would be cheap even though we were all worn out in its attainment. And we may well beware lest we be exhausted by the contest, if we lose the present possible opportunity to secure it.

But is the exemption one of the good things in the old constitution that must be abandoned to save the others? I know there is a formidable monetary power in the country that opposes it and will, perhaps, oppose any constitution that contains it. But the people have learned the nature and extent of that power, and their ability to carry their measures against it, and in spite of it. The same power that can carry the popular currency policy can carry the exemption policy with it. If the people can triumph in the one case they can in the other—and indeed with more ease and certainty—because the justice of homestead exemption is more deeply felt than the fundamental error of a paper currency by the agricultural masses, and because its expediency is more self-evident to minds too much habituated to reflection upon practical things to be acquainted with the profound mysteries of our paper money machinery. Not that it could be carried without the currency reform with it—but that is not the question; though I would raise the question whether your proposition, which I regard as the true doctrine, can be carried without the exemption. Is not the connection between the two so close and indissoluble—are not the interests arrayed in the support of both, so intimately identified and so much the same—and is not the association of the two in the public mind so strong that either one must fall by the abandonment of the other?

Allow me to touch upon another subject on which I have looked to your party with strong hopes of an advance—the elective franchise—and inquire whether you are not about persuaded to adopt the broad principle that "Every man has a right to a voice in making the laws by which he is governed." I know you believe in man's natural right of revolution. And I would ask—how can you adopt this without that? And also how can you cherish your desire for an extension of the elective franchise without adopting the great principle of free suffrage?

THE DEMOCRATIC PARTY AND THE CONSTITUTIONAL CONVENTION

[December 15, 1847]

As the time is now at hand for the assembling of the new convention to form a constitution for the state of Wisconsin, and as the recent election for delegates has resulted in constituting a majority of that body of the Democratic party, some few reflections may not be amiss at the present time on the subject of their labors.

To the Democratic party belongs the right as well as the duty to form the constitution; and to say that a constitution should not be a political question or that political questions should not be permitted to enter into the character of that instrument is to say that Democrats should yield at the most important crisis in the history of their state those great principles of government which have served as the guiding points in their political career and

formed the great separating line between them and their opponents. That the Whig party should preach such a doctrine at this time is nothing unusual for them; but that they regard a constitution such an instrument as should not recognize any political principles, their course in regard to the adoption of the late constitution demonstrates most emphatically they do not. By political questions we do not mean to be understood as embracing many minor questions of doubtful expediency, which often are local in their nature and serve for a while to divide the political parties of the day but which are lost sight of immediately after their disposal, but refer only to their great leading principles of government which have so long served to distinguish the two political parties of our country. From the earliest history of our country there has been a constant struggle between the Democratic party and its opponents. The progress of the Democratic party has been a constant advance in the principles of self-government, and as constantly opposed in its progress by its opponents; and history shows that it has made no difference under what name its opponents rallied—whether under the Federal banner, as they did from 1798 to the formal disbanding of that party by the forty-eight "high-minded gentlemen" in 1816, or as National Republicans from that period to 1834, or as Whigs from that period to the present time—they have invariably opposed the adoption of those measures that have so distinctly marked the career of the Democratic party. That they should continue to do so in future is just as sure as darkness will follow the sun in his diurnal revolutions round the earth. That the Democratic party of Wisconsin should falter at the present time and hesitate to carry out the principles of self-government which have been found so essential to the welfare of the masses (the people) is what no true friend of free government can for a moment contemplate with composure. Notwithstanding their apparent discomfiture in the defeat of their former constitution, still they are called upon to advance; notwithstanding they have been branded as "progressives" by their conservative opponents, still they should not fear to avow their principles at all times and in all places, not doubting but the intelligence of the people will discriminate and duly appreciate and approve in the end. Although they may by the arts and misrepresentations of their opponents be slow at first to adopt all their improvements, yet the past has fully proved that they need not distrust the future. When we take up the several state constitutions

as first adopted and compare them with what they are now, we are enabled duly to appreciate the great progress that has been made in the science of free government in this country since the experiment was first tried. The different departments of the government have from the earliest adoption been distributed—as in their original model, the British Constitution—into three branches: the executive, legislative, and judicial. These several departments of government, springing from the people and instituted solely for their benefit, recognized all power as resting in the people as sovereigns. But it was only the two first that, until very recently, it was thought the people were competent to create; although they had to support and obey the judicial department of the government, still it was held even in this country that it was unsafe to trust the people with the selection of those who were to discharge the duties of this department of the government, but that it must be vested in the other two. And the proposition to take from the executive branch of the government the power of appointing the judicial department and vest it solely with the people is denounced as a step too far in advance for the intelligence of the people of Wisconsin. Is this so? Will the Democratic party hesitate to carry out this truly democratic measure because it is denounced as progressive? So also in the various state governments, the appointment of a large class of officers has devolved upon the executive, giving to that officer a tremendous influence in the state by the patronage he could dispense. This feature it is proposed to change and to restore the power to the people direct—this, too, is denounced as progressive! The histories of the several states likewise show that their legislatures have had the power by acts of legislation to grant special favors to individuals which were denied to the mass of the people, which have been found to exercise an undue influence in the creation and distribution of wealth, and as such regarded as monopolies of a dangerous character; the proposition to deny such power or prohibit its exercise by the legislative department of government is denounced as progressive. The tendency in the state governments has been to tax the mass of the people for special and local objects under the plausible plea of internal improvements, through the means of borrowing, and thus create a heavy state debt to be paid by posterity—to guard against which, by rigidly confining the power to create debt to certain definite objects, is denounced as progressive. The tendency in all the states has also been for the

wealthy to monopolize the land to the exclusion of the great mass of the poorer classes as proprietors of the soil; to check which, it is proposed to guard against a compulsory sale of the homestead; and it is denounced as progressive. And the history of the several states has further shown that from the great multiplicity of banks the currency has become almost exclusively paper, thereby driving out of circulation from among the people gold and silver, the only constitutional currency known to their government, and substituting in lieu thereof the paper promises of banks and bankers, which are subject to great depreciation and final loss. The proposition to exclude this class of paper as a currency from among us, of small denominations, that we might retain the gold and silver as a currency for ordinary transactions in the daily intercourse of the people is denounced as progressive and must be abandoned.

The foregoing are the principal questions which now agitate the body politic on the subject of a state constitution and which will come up before the convention for their incorporation or rejection in that instrument; and how many of them are Democrats prepared to surrender and yield up as experiments in government, which ought to be abandoned? Not one of them we trust will the Democratic party lose sight of until it is triumphantly adopted and its practical operation shall have demonstrated its fitness. But, say some, the rejection of the former constitution by the people has decided those questions; therefore the people are opposed to them; and they should be given up. True, the people of Wisconsin by a decided vote rejected the constitution—and as a majority rejected it as a whole; but what was settled by it? Nothing more, it is contended, than as a whole for various reasons a majority of the people were opposed to it. It is firmly believed, and the opinion is sanctioned by the expression of the press generally, that, submit those questions to the people of Wisconsin singly, which were made the rallying points by the opposition to the constitution in their attacks upon it, and they would be severally adopted by them. To doubt it, would be to distrust their intelligence and to doubt their Democracy.

The grand attacks were mainly upon three articles of the former constitution, viz., the bank article, the homestead exemption, and the article securing the rights of married women. It was pretty generally approved except these three articles, but it must not be believed for a moment that a tenth of the hostility to that instru-

ment which produced its rejection sprang from a hostility to those articles alone. In the first place, the Whigs as a political party constituting a minority were actuated, as all political minorities always are, by a hope of effecting their ultimate success by defeating, if they could, the adoption of the constitution, thinking that such a result would have a tendency to destroy the Democratic party; hence, in their action on that question no great political truths were settled other than another sure proof added to the number heretofore existing, that the Whig party will always be found opposing anything proposed by their opponents, let it be ever so equitable and right, if their party leaders raise the cry that it is Whig policy to do so. In the second place, the Abolitionists as a party opposed the constitution, because it did not allow equal suffrage to the negro as well as to the white man; and in some of the western counties the constitution was opposed because it provided for submitting the question of equal suffrage to a vote of the people, and providing for the adoption of that principle into the constitution if a majority of the people should so determine. And further, no inconsiderable opposition sprang from that class of politicians who have heretofore regarded the executive patronage as so much political capital placed in the hands of the executive for their use—hence, they directed their batteries against that instrument. And last, though not least, was that numerous class of citizens amongst us who gain their living by buying and selling—they seemed to apprehend that the proposed exemption was to destroy that protection they had heretofore enjoyed in their dealings with the community.

We would again repeat the question—What has been settled by the former vote on the constitution? And the answer arises—Nothing only that as a whole the people were opposed to the constitution. Under such a state of affairs, what is the duty of the new convention? To which question the answer very naturally arises—Adhere strictly to the principles of the Democratic party; embrace in the constitution all the important and essential features to render it perfect, leaving out all such matters as appertain particularly to legislation. Such measures as can be as well adopted by law had better be left to legislation; but all the great and leading features of our government, with the necessary safeguards to avoid improvident and hasty legislation, should be complete in our charter; and whatever question of progress and reform may be accomplished by legislation will ultimately be adopted as surely as if embraced in the

constitution, and should not be regarded as abandoned by the party if left out of the new constitution.

HOMESTEAD EXEMPTION

[February 2, 1848]

We publish today the remarks of Mr. Larrabee on the homestead exemption question. We deem it unnecessary to invite attention to them, because there have been few questions before the convention in which the people, generally, feel a deeper interest; and we are sure that the opinions of a working member like Mr. Larrabee will not be unheeded. The principle of exemption is certainly not new; but the broad and equitable application of it contended for is clearly not among the old and well-established and, of course, well-understood ideas of the past, and, therefore, according to some very old authorities, ought to be viewed with at least a portion of that jealous circumspection with which we are required to regard matters and things of every nature and description—from political principles to patent pills—the newness of which is their chief recommendation.

But while we prudently stand aloof from things merely new, we should be careful not to cling too fondly to the dust-covered monuments of antiquity, or to reject without examination the suggestions of contemporary minds. Philosophers in every age have regretted the slowness of the march of great ideas; and philanthropists ought to regret that the doctrine of progress—political progress—is considered new in the nineteenth century. Under despotic, aristocratic, conservative governments the course of progress must be slow—almost imperceptible—because a people who are not free, or do not know how to enjoy freedom, cannot bear great and sudden political changes. Under such governments a well-guarded natural right may perhaps, without danger, be conceded within an age; and a new political doctrine may struggle into existence during the lapse of a century. But under our democratic republican system, which has been so eminently characterized by progress, the adoption of great, just, and philanthropic principles can be productive of nothing but benefits and should not be objected to when they are clearly understood.

We live in an age of progress—of progress rapid beyond precedent, and steady and beneficial almost beyond hope.

Ages or centuries are not now allowed to elapse between the suggestion of a truth and its discovery—between the knowledge of a principle and its application. The fugitive thoughts of today become the fixed principles of tomorrow; and that which was regarded yesterday with doubt and uncertainty is relied upon today with all the confidence which demonstrated truth can inspire. But yesterday, and the most progressive entertained some doubts of the propriety of abolishing imprisonment for debt. Today there are many who raise their voices against the adoption of the principle of homestead exemption; but we have no doubt that tomorrow the latter experiment will be universally acknowledged to be as correct in theory as the former, and as benign and salutary in its practical effects.

Although the convention has refused to embrace in the constitution an exemption article, yet the principle has been acknowledged and asserted in the bill of rights.

The delegates from Jefferson and Dodge, representing a great agricultural interest, were unanimously for the article, while those from Milwaukee, representing a great commercial interest, were almost unanimously opposed to it. Yet the country and the city have come together with a spirit of reciprocal compromise; the agricultural interest has allowed commerce to hope for banks; and the commercial interest has acknowledged in the most emphatic manner the right of mankind to a home.

This we consider a great triumph for the friends of progress. They have done well and ought to be almost satisfied. Many, it is true, would consider the constitution improved if it contained an exemption article; but the recognition of the principle and its assertion in the bill of rights will, we believe, give very general satisfaction.

RATIFICATION OF THE CONSTITUTION

[February 9, 1848]

We publish the constitution this week and recommend everybody to read it—to read it attentively, beginning at the beginning and studying over it to the end; and if any elector is entirely satisfied that everything it contains ought to be there, and that no one thing that is out of it ought to be in, then, and in that case, we know where there is a hat to which he is entitled. But if anyone is so

much dissatisfied with any provision or provisions in it, or on account of any omission or omissions, that he will not vote for it, we should like to see him—that's all. We have seen or heard of no such individual in these parts.

We are fallen upon strange times. The argumentative politicians look as they never looked before; and their feelings, we presume, are equally new to them. Poor fellows! their "occupation's gone"—they can't raise an argument—there is nothing to argue about. Unfortunately for their peace they have asserted that the constitution is a good one—much better than they (patriotic, observant, and knowing as they are) expected it would be—and oh! the perversity of human nature! Everyone agrees with them; even the ladies, married and to be married, are satisfied with their "rights."

We state the rule, and to prove it we shall mention an exception. Mr. Brownell, the delegate from St. Croix, refused to sign the constitution; and it is fair to presume that he will not vote for it, because he dislikes the boundaries as defined by the convention. To the people of Wisconsin, generally, the boundary question does not possess much interest. They cannot see how their interests or the interests of the state will be advanced by the extension of our northern or western boundary, while it is very apparent that the political power and influence of the great Northwest will be augmented in the United States Senate, where such influence is much needed, by an increase of the number of states. True, the Ordinance of 1787 forbids the formation of "more than five states" in the Northwest; but the ordinance, although the evidence of a solemn compact, is not a Median law. It is repealable; and that provision at least ought to be repealed. Whether the boundary defined by Congress or that proposed by the constitution shall be the boundary, we shall have room enough. No state in the Union will have less cause to complain of the quantity or quality of her territory than Wisconsin—and no state in the world can point to such a constitution.

THE DUTY TO VOTE

[March 8, 1848]

On next Monday the constitution will be adopted or rejected. Its adoption we regard as almost absolutely certain; its rejection, as among the things that are not to be. Still, every elector ought to be at the polls and vote.

It is supposed by many that the vote will be very light. This ought not to be so. It is seldom right to allow any public measure to pass unapproved or uncensured, even though its importance may be comparatively trifling; but to rest supinely when a constitution is to be adopted or rejected—an instrument in which every individual in the community has a deep interest and which may influence powerfully the destinies of other states and other generations—is to neglect a sacred duty which every citizen owes to himself, to his fellow citizens, to his country, and to posterity.

Every thinking elector must, we are persuaded, regard the constitution of a free state as an instrument of too much importance and feel too strongly his high responsibilities to allow it to be adopted or rejected without saying "Yes" or "No." The certainty of its adoption, which almost everyone assumes, should not excuse its friends or deter its foes (if it has any) from the ballot box. When "to be or not to be" a state "is the question," not a single voice in the territory, loud enough to be heard with effect, should be silent.

SELECTIONS FROM THE WAUKESHA *AMERICAN FREEMAN*

THE NEW CONSTITUTION DENOUNCED

[February 9, 1848]

We have no time nor room to speak at large of the new constitution. Indeed, we have but just got hold of a copy of it. From a hasty review of it we should say that while in some respects it is an improvement upon the former, in others it is far behind it. It contains that same infamously black word "white"; and if there were no other objections to it, it should be voted down by every friend of human rights. For it contains in theory the principle of contempt for the rights of man. The right of suffrage, notwithstanding the flippant prating of misnamed Democrats to the contrary, is an inalienable right; and when the constitution denies it to any, though a black man, it in principle denies it to all men; and it therefore allows it to some as a matter of mere convenience, and not as a right. Every man who voted for the word "white" is unsound in the true Democratic faith and should be rejected as unprincipled by the people. And so should the constitution. Just read the first section of the declaration of rights: "All men are born equally free and independent and have certain inherent rights," etc. And then stab the "inherent right" of suffrage in the case of the colored man! The hypocrites! No consistent Liberty man can vote in favor of this constitution. More anon.

AN ARGUMENT FOR RATIFICATION

[February 23, 1848]

MR. EDITOR: In the last *American Freeman* you close an article on the constitution about to be submitted to the people for adoption or rejection, in these words: "No consistent Liberty man can vote in favor of this constitution." Now, sir, I consider this a rash and inconsiderate attempt at party dictation, and one that merits at the hands of Liberty men a severe rebuke. This, as well as all other questions submitted to the people, should be carefully considered by every voter for himself, and that course pursued which duty plainly dictates.

Although I have ever expressed my determination never to vote for a constitution that placed the right of suffrage on the color of man's skin, yet I now see reasons for changing that position, and with your permission I will give some of those reasons to the public. And I presume a large portion of the Liberty party, when they come to vote on the constitution, will be governed by similar reasons; at least so far as my knowledge extends, Liberty men in this section take the same view of the subject that I do.

When the last constitution was submitted to the people the right of free suffrage was also submitted separately; and it was found that a large majority of the people were opposed to the extension of the right of suffrage to colored men. This was a manifestation of a wrong public sentiment. Nevertheless it was the expressed will of a majority; and a sound Democratic rule is that "the majority must rule." Therefore, in accordance with this principle the last convention was bound to exclude colored men from exercising the right of suffrage, at least till they had again submitted it to the people. Had the question never been submitted at all to the people, the case would have been entirely different; but as it is, the obvious duty of Liberty men is to correct public sentiment on this subject; and the convention, as if in anticipation of the speedy accomplishment of this object, provided that the legislature might at any time extend the right of suffrage to colored men, to take effect whenever a majority of the voters of the state should so decide.

Now it is certain that we can never get a constitution with equal suffrage guaranteed till public sentiment is corrected; and even if we could, the great cause of human rights would gain but little if a large majority of the people of the state were opposed to it. The reason why I supposed I could not vote for the constitution was because I thought it would be a sacrifice of principle. But how can it be a sacrifice of principle when that principle is not in the least affected by my vote; for in the present instance we stand equally as good a chance to establish the inalienable right of suffrage by adopting the constitution, as in rejecting it. In either case we must enlighten the public mind and get the sanction of the people, before we have accomplished our object. Then, if the principle for which we contend is not in the least affected by our course in the present instance, where is the inconsistency of voting "for the adoption of this constitution"? I cannot for my life see any, and

I think, sir, if you can, your discernment is sufficient for the splitting of a hair.

But, on the other hand, among the many reasons for supporting the constitution, allow me to present but one, and that is that the question of slavery or freedom, which is now agitating this nation from one extremity to the other and which will soon be met in our national legislature, calls upon the friends of human rights for prompt and efficient effort to prevent the triumph of slaveocracy and secure the blessings of liberty. In the present contest raging in the halls of our national legislature for the extension of slavery it is of the utmost importance that the influence of Wisconsin should be felt for freedom. The four votes of Wisconsin upon the further extension of slavery cannot with safety to the cause of human rights be dispensed with. For as to the final result of this question we all have our fears; and I deem it of the utmost importance that the North should be strengthened all that it is possible to strengthen it. This may be regarded as one of the most important periods in our nation's history. Then why, in a crisis like the present, should Liberty men falter? Why be found chasing a shadow, when the substance is within their reach? I shall never envy that man's reflections who, when he sees slavery extended over territory now free, shall be able to trace back to his vote on our present constitution this dread calamity, for I consider it impossible for either party to elect a man to Congress from this state who is not in favor of the principle of the Wilmot Proviso; for at the last election even Moses M. Strong, one of the most proslavery men in the Democratic party, took strong and decided ground against the further extension of slavery. And I know not a man in either party of any prominence who, if he were in Congress, would vote against the Wilmot Proviso. With this view of the subject I cannot see how any Liberty party man who is blessed with common sagacity can hesitate for a moment to "vote for the adoption of this constitution." But I am aware that I am exceeding the limits of a correspondent. But I could not say less; this is my apology.

RACINE, February 10, 1848 S. B. PECK

COMMENT ON MR. PECK'S LETTER

[February 23, 1848]

Mr. Peck's communication, which will be seen in another column, is certainly a singular communication for a Liberty man to

write. The principles of the argument, if they deserve the name, would, if carried out, disband at once the Liberty party, for they are in flat contradiction of all those grand principles of action which have always been cherished by Liberty men as the very apple of their eyes. The principles of the Liberty party have been "right against expediency"—the principle of Mr. Peck's communication is "expediency against right." Because we said in an article a few weeks ago that no consistent Liberty man could vote for the constitution, Mr. Peck charges us with a rash and inconsiderate attempt at dictation. Now he has read, we suppose, the proceedings of the Liberty Association of Wisconsin, in very full meeting, when the party, as thus represented, without a single dissenting voice, took the same ground. Was that dictation? Cannot a man express freely an opinion he has formed some ten years since, which has been strengthened by all his experience, investigations, and reflections, without being considered rash? But we do not suppose Mr. Peck meant much by the phrase after all. Mr. Peck has been, in the days of his ignorance, rashness, and inconsideration, of the same opinion with us. But he has now made the discovery that a principle is not violated when a man tramples it under foot, if the blessings which it promised will be realized just as soon as though he had honored the principle. The religionist in Christ's time might have reasoned in favor of his crucifixion, that the grand objects of religion would be promoted even more by crucifying Christ than by letting him live. Therefore it would not be murder to crucify him. Another rare specimen of Mr. Peck's deductions. The people had vetoed the suffrage question; and the convention had no right to form a constitution with free suffrage. Consequently all those who voted for free suffrage committed a sin against democracy and right.

And finally Mr. Peck says he can give but one reason among many for voting for the constitution. We suppose that he gives the best specimen in this: It is that we must have a delegation in Congress to vote for the Wilmot Proviso. Mr. Peck knows perfectly well that the constitution will be adopted whether he or we vote for it or not, so that he is just as sure of a delegation in Congress if he should honor the claims of God and conscience and humanity upon him, as he will be in voting down antislavery principles by voting up a proslavery constitution. But to intelligent Liberty men Mr. Peck's communication will need no refutation.

NEW CONSTITUTION—COLORED SUFFRAGE

[February 23, 1848]

The following resolutions will show to all whom it concerns how the Liberty men in Wisconsin, in convention assembled, regard the constitution so far as respects the question of suffrage. We commend them to Mr. Peck and all others who seem to be sighing after the leeks of Egypt. They were passed at a very full meeting of the Liberty Association of this territory without a dissenting voice:

9. That the right of suffrage is not a conventional but an inalienable right, and belongs to every man in virtue of his manhood.

10. That to admit any other doctrine or to sanction the slightest violation of the principle is to endanger, so far as dependent upon the ballot, the interests and rights of all, to open the door for the disfranchisement of all.

11. That the principle which in Wisconsin disfranchises the colored man is a part and parcel of the same principle which at the South reduces him to and holds him in the condition of chattel servitude. The principle which robs the colored man of one right only needs scope and opportunity to rob him of all rights.

12. That in view of these self-evident truths no fundamental law submitted to the people of Wisconsin for their approval which fails to provide for the full, practical recognition of the equality and inalienability of the suffrage right can receive the sanction of any Liberty man; but as he values the great fundamental principle of republicanism and of his party organization, he is bound to repudiate and reject it.

The new constitution which is soon to be submitted to the people for adoption or rejection disfranchises the colored man; renders him ineligible to any office—legislative, executive, administrative, or judicial; and even takes away from him the right to vote on the adoption of the constitution itself. We will not deny that the constitution has some good features—that it contains some things which we should be glad to see adopted as the organic law of our noble territory; but while it tramples under foot the rights of human nature and stabs to the heart every right in the universe, atheistically scoffing at the rights of Jehovah himself, we cannot vote for it; and we cannot see how any man claiming to be a Liberty man can do so. When will men learn that rights are rights; that God's are no more, and man's no less? The individual who is not willing to award to man the rights belonging to his nature, to his position in the scale of being, is unjust, dishonest, and will not award to God the rights that belong to His nature, to His position in the scale of being, only as he deems it expedient. He cannot do it on any principle of honor, honesty, or justice. If the framers of this in-

strument did but know it, they have proclaimed themselves the enemies of the human race and of the God who made them. He that is faithful in that which is least is faithful in that which is much; and he that is unjust in the least is unjust also in much. He that loveth not his brother whom he hath seen, how can he love God whom he hath not seen? He that regardeth not the rights of his poorest brother whom he hath seen regardeth not the rights of God whom he hath not seen.

Why cannot these despisers of man perceive that a colored man has in him all the elements of our appropriate humanity, every single foundation principle of rights which any man or angel or all men and angels in the universe possess? That when they deliberately put the heel of oppression upon him they in principle put it upon all the moral beings with all the moral rights of the moral universe, God himself included. There is no escape from this conclusion. A damage done to the rights of the least of Christ's little ones is a damage done to the rights of Christ. "Inasmuch as ye did it to one of the least of these, ye did it unto me." But the right of suffrage is not an inalienable right, it is said. Very well. For the sake of argument admit it. Still it is to be exercised by somebody. Who shall exercise it? White people? But there are no perfectly white people. Black people? It is said none are perfectly black. You do not make a property qualification; you do not demand a reading and writing qualification; nor a moral qualification.

Then in the name of common honesty and common decency, not to say of democracy, why do you drive the iron of oppression into the souls of colored men—why disfranchise them? They are better acquainted, as a general thing, with our institutions than foreigners. The reason is that these men are the tools of slaveholders. They wish to do them a favor. These miserable creatures are the bloodhounds of the South; and for the sake of obtaining Southern favor and party promotion they are willing to bay on the track of the poor colored man. These men know they have no valid reason for thus outraging human nature and human rights, the principles of democracy and the rights of God. They do it to please the South and keep good their party. And shall we sustain them in this crusade against our Father and his less favored children? We trust not.

But the right of suffrage is an inalienable right. This will be apparent on a moment's reflection. We all admit that life, liberty,

and the pursuit of happiness are the rights, the inalienable rights, of every human being, and that men have an inalienable right to institute governments for the protection of these inalienable rights. But the inalienable right to protect these rights grows out of the fact that every human being has these rights; consequently if any human being has a right to mingle in those activities for the protection, by government, of these inestimable rights, then every human being has; but the colored man is a human being—therefore the colored man has an inalienable right to vote for or against a constitution, to be an elector under it, and to be eligible on the same principles with other men to any office—legislative, executive, administrative, or judicial. The moment you attempt to limit this right, that moment you do violence to the democratic principle, the principle of human equality, of human brotherhood, and are assuming in principle the arrogance and the tyranny of an aristocracy. For instance, if a given number shall impiously exclude the colored men from the inalienable right to participate in the formation of government, for the protection of their inalienable rights, they may, on the same principle, exclude from the same rights those Indians who are citizens of the United States—and if the Indians, then all foreigners—and if all foreigners, then all landless men—and if all landless men, then all men who have not over one hundred and sixty acres of land—and if these, they may with no more injustice exclude all but a noble and kingly few, and thus form an oligarchy, and if an oligarchy then a kingdom, if there is only sufficient concentration of power; but it is objected that that cannot be done. Well, if it cannot, no thanks to the principle. Wrapped up in the principle are the seeds of the rankest despotism that curses the earth.

Thus the constitution admits the principle of kingly despotism. The premises from which we arrive by unbroken logical links of deduction to these conclusions are expressly stated in Article 1, section 1, headed "Declaration of Rights"—"All men" are born equally free and independent, and having certain inherent rights; among these are life, liberty, and the pursuit of happiness. To secure these rights, governments are instituted among men, deriving their just powers from the "consent of the governed." Now the colored men are just as much a portion of the "governed" as any other portion of the people; and on the principle by which the constitution rides over their rights, it in principle rides over the rights

of human nature and proclaims the monstrous principle of despotism. Our new constitution absolutely defends the rights of kings and autocrats.

But it involves the principle of chattel slavery. For by the same assumption of power by which the constitution takes away the inalienable rights of the colored man to participate in the formation of a government to protect his inalienable rights, it could forbid him the right of participating in the benefits of the school fund, the right of marrying anyone lighter in complexion than himself, to be out after eight o'clock, to be eligible to any of the learned professions, to own land, to own himself. We tell our readers that our very democratic constitution involves the rights of kings and chattel slavery. And we say further that it denies the prerogatives of God himself. And shall Liberty men vote for such a constitution? Shall Liberty men come down from their lofty elevation of principle to dabble in the atheistic principle of expediency? Shall we now learn to do evil that good may come? Shall we choose the least of two evils, or, in the language of Dr. Taylor, the "least of two devils"? Our power lies more in our integrity than in our numbers. Nay, it lies in our integrity.

We believe, as we believe in our existence, that had it not been for the vacillating of our friends, turning aside at local elections, dabbling in the corrupt ethics of the day, the belief that "a man may stab one great principle to the heart if he can only foster two good principles by the act," a substitution of gain for Godliness, a dickering and trafficking in principle, we should have had one of the great parties on their knees at the shrine of Liberty long ere this. Let every Liberty man keep his conscience clean by voting for principle, by standing fast to the whole truth, by voting in such manner as would (should all vote with him) secure the great objects of justice and mercy. We are anxious to see our friends present one embodied phalanx at the coming election—to see them write the emphatic word "no" on this mongrel, God-dishonoring, liberty-hating, man-crushing document.

INIQUITY OF THE CONSTITUTION

[March 1, 1848]

DEAR SIR: The new constitution finds pretty general acceptance among the people in these parts. I have not heard a tongue in either of the predominant parties wag a word of disapprobation of it, not-

withstanding its antidemocratic suffrage article. And I perceive by one of the Madison papers that the Abolition paper in Waukesha is the only paper in the territory that has audacity to speak out against the document. All the rest have by common consent, it seems, buried the hatchet under the peaceful tree of "compromise" and have agreed in the plenitude of their wisdom to insult that large class of Democrats in the territory known as Liberty men by walking deliberately over those great principles, which they contend ought to be embodied in every decent republic. I wonder what these Democrats would have said if to the odious word "whites" in the suffrage article the convention had affixed a proper qualification. Would not there have been a stir among the Democratic papers at the idea that one man, though a fool, owning a jackass could vote, over the Dr. Franklins, who had nothing? Ah, what would the sapient editor at Madison have thought of the "compromises" then? Oh, it is your bull that gored my ox. Now, in my humble opinion, "a man's a man for a' that," whether he owns property or has a black skin. But the exceeding wisdom of the article in question will appear if you look at it in the light of the glorious "compromise" by which that article was enacted. It allows the serf from Russia, the wronged and abused slave from Austria, the ignorant Circassian from Asia, the dark-hued Spaniard, Italian, and Turk, all, to vote, because they make some pretensions to being "white"! But a native American, though endowed with all the learning of Euclid, though possessed of all the genius and eloquence of a Dumas, is debarred that inestimable privilege because, in the depths of God's great goodness, he has a black, not a copper-colored skin. How grand, glorious, ennobling is such a democracy!

To those members in the convention who stood up manfully for the right our thanks are due; but for those proud, haughty men whose democracy is not even skin deep, but who would, if they dared, debar all from the right of suffrage, of whatever color, who did not possess five dollars, let political execration follow them.

No Liberty man who respects himself or his principles will dishonor his mother by voting for the new constitution.

EAST TROY, February 22, 1848 GUILLAUME

SELECTIONS FROM THE FOND DU LAC *WHIG*

ORGANIZATION OF THE CONVENTION

[October 21, 1847]

No news yet from Madison. In our next we shall give a sketch of the proceedings of the legislature and hope to be able to record the act calling a new convention.

There are indications of a desire, as we intimated last week, to patch up the old constitution and present that; but we think we can safely say it would be entirely at variance with the wishes of the whole community so far as we have the means of knowing. Believing that there will be no such action by the legislature, we trust that in apportioning the representation there will be a sacred regard manifested for the interest of the new counties and that a spirit of liberality will pervade that body in laying the basis of representation. To adopt the last census would be very great injustice to the new counties; yet it may be urged with some propriety that it is the only one on which a legitimate apportionment may be made. But we think that unless it can be ascertained authentically what is the present population of the counties, the vote upon the constitution might be taken as a basis; this would not be unjust and perhaps might be a very correct ratio upon which an apportionment might be made. At all events we trust the legislature will see the impropriety of adopting the last census.

Again, the convention should not be small—at any rate not so small as to leave any county or interest unrepresented. In adopting an organic law all citizens have a right to be represented, not theoretically simply, but actually, in so far at least as that his interests shall have an advocate and defender, one who will understand when a proposition is brought forward whether his rights and privileges are to be infringed should it be adopted. There can be no democracy in a small convention; or rather, there can be no aristocracy in a large one. A few men may be corrupted, led away by false lights by the corrupting agents of aristocracy; but in a large body of men where the people themselves get together there is no danger that they will not attend to their own interests; and when the people are cared for and protected the country is always safe.

AN APPEAL TO THE PEOPLE

[November 4, 1847]

The coming convention will awaken discussion of constitutional principles; and we trust that it will not be left to the members of the convention to do all the talking on this subject. It is peculiarly the business of the people to begin the discussion in primary meetings, that their representatives may be ready to listen to their conclusions and opinions when presented to them in their petitions. More than all, however, discussion should be promoted, that the people themselves may understand the nature of the government and laws under which they are to live and which will best conduce to the happiness and best interest of the people. Since papers are already beginning to present their notions of the peculiar principles they would have incorporated into the constitution and especially those which favor the peculiarly obnoxious features of the rejected one, once for all we think a question settled should not be disturbed—bygones should be bygones. Where a principle has been fully discussed and distinctly passed upon, there need be no further discussion. For example, it is folly to begin to advocate restrictions upon the people to grant corporative powers that have been settled already.

It is proper also to warn the people against new heresies which are already beginning to be cast into the political cauldron. There is a set of daring politicians who have come to this territory and cast off their political faith like serpents shedding their skins, who to carry their points will be less scrupulous of the means to be employed than they were in their first infamy. Of such men beware. Let the first inquiry of your candidate be: Do you maintain your former faith? If not, why have you changed your opinion? And if he is unable to answer fairly and fearlessly let him be discarded, be he friend or foe.

Certain self-styled Democrats in particular who have fattened upon the spoils of office left their eastern homes with good Whig recommendations in their pockets, and have had the hardihood to present them here, and after all change front simply because they hoped to get into office thereby; others have changed by the way and upon landing on your shores have lifted up "Democratic" hands for the first time and are now lisping the praises of those whom in their hearts they heartily despise, licking the sceptered hand

that they may be fed. Look well to your candidates, if you would have a good constitution!

CONSTITUTIONAL PRINCIPLES

[November 11, 1847]

We took occasion to remark a week or two since upon the propriety of discussion by the people in neighborhood gatherings of those principles and features they would have embodied in the new constitution to be formed by our convention. We cannot say with too great earnestness the importance of this matter and must be permitted to call attention again to the subject. We took occasion also to remark that it would be necessary to guard against heresies of doctrine, so to speak; and we find that we were just in time. The Fond du Lac *Journal* has already opened its guns upon the "credit system," that which has done more for this country than—we had almost said all things else combined. Without the benefit of the credit system, what would the poor man do? Often it is his only hope in misfortune for the necessaries of life and health; yet at all times his capital, as good to him as the rich man's gold. It is a bold stand for a paper in this country to oppose the credit system. By destroying it, you reduce everything to a hard-money standard. By the credit system more than half the citizens of this country, we presume, have been enabled to obtain their farms. The right of preëmption is based upon the credit system; and when the poor man goes on to his forty or eighty by preëmption he is "credited" —trusted—by the government for a year; and when the *Journal* opposes this system it opposes the right of preëmption—it denies the right to get a pound of tea, or an overcoat, or anything the most necessary, unless we have the good fortune to have the gold in our pockets to pay. So you must always have the means to pay the physician in advance or lie on your bed till you can earn enough to send for him. This is an extreme case, it is true; but after all if the right to get trusted is denied, this extreme result must follow. The *Journal* says, "Those who live by the operations of the credit system will oppose the exemption of the poor man's homestead from execution and thus leave innocent families the victims of misfortune and rapacious creditors." Were that paper's principles to be carried out and the credit system to be abolished, the "poor man"

would have no "homestead" to exempt, for it is by the credit system the "poor man" obtains his "homestead."

If the candidates of the *Journal* for delegate to the convention entertain like views with that printed, the people and especially the poor men of this county will do well to look to the matter and support such men as are not hostile to their interests.

SELECTIONS FROM THE LANCASTER *WISCONSIN HERALD*

WHAT NOW?

[April 17, 1847]

The constitution being rejected by the people, the governor will immediately call a session of the legislature. That body well understands that the people desire a small, select convention. The people of the west would like to have no more members in the convention than compose the Council of the territory. At the very extent, there ought to be no greater number of delegates than there are members of the house of representatives. Upon this basis no new apportionment will be necessary; and the legislature can provide for a new convention in one week. With the exception of restoring to Wisconsin the boundaries given to her by the act of Congress, there seems to be little or nothing for a new convention to do but to expunge those parts of the constitution which have met with condemnation so general—to lop off the innovations and rid it of all its "progressive" features. Give us a judiciary elected by the legislature. That is safe. Let us hold fast to what is well tried. Limit the size of the legislature to forty members of the house and twenty members of the senate. That is safe and economical. Repeal all those provisions about married women; and the exemption laws—leave exemption to the legislature, to whom it belongs. Prevent the charter of incorporated banks if you will, but away with the sixth section. Remember that the people through the legislature retain the powers not taken away by the constitution. Do not tie the hands of legislation. Give us a short lucid constitution, containing rather too few than too many provisions—make it soon and make it permanent, and the people will be satisfied with it.

SHALL WE PREPARE FOR FRAMING ANOTHER CONSTITUTION?

[May 29, 1847]

So far as we can learn the sentiments of the people of Grant on this subject, we are of opinion that nobody cares much about it. The folks here are very well content to let the matter rest until the meeting of the legislature. There is no stir about it—there are no

petitions circulating. Our politicians all nailed their colors to the constitution that went under in April; and the masses are well enough content with things as they are. Wait a few months—give our politicians time to turn in the popular breeze—to explain—to define their position, before you send them back to Madison. Let the echoes of their speeches in favor of the defunct constitution die away in the halls of our capitol before you call upon them to contradict, oppose, and undo all that they said and did in the late convention. In the meantime we are relieved yet a little longer from the burden of state taxation—and the people will have more time to discuss and deliberate upon the principles which a constitution ought to embrace.

One thing seems to be agreed upon on all hands—that the fewer members the people elect to frame a constitution, whenever another convention shall be formed, the more concise, consistent, sensible, and satisfactory will be the constitution which may result from their labors.

THE BOUNDARY QUESTION

[December 25, 1847]

MR. EDITOR: Suppose our convention extends the constitutional mantle over but a part of the territory designed by the Ordinance of 1787 for the "fifth" state, what is to become of what is left out?

Virginia ceded to the United States the territory northwest of the Ohio River, in trust, and for a specific object, specified in the deed of trust. Now if the trustee should make five states out of less than the whole of the territory, does not the remainder revert back to the original owner? In other matters of trust it would, and why not in this? Or suppose the trustee divides the territory into states different from the provisions of the deed of trust: would it not be a violation of the trust and cause the premises to revert back to the grantor? Or, suppose the trustee gives to one state more territory than the deed of trust authorizes, can that state hold it as against the grantor? Among men and at common law, and in common honesty it could not. What, then, can hinder Virginia from claiming back all the disputed district of Illinois, if we do not claim and get it?

A deed of trust, like a power of attorney, gives no powers beyond what it specifies; and if the attorney or trustee transcends his pow-

ers, so far as he transcends his acts are void. If these views be correct, then our convention must spread its mantle over the whole of the district designated by the ordinance for the "fifth" state, and Congress must grant it, or Virginia may—and I am informed will—declare the compact annulled by the breach of trust on the part of the trustee and claim the territory not legally disposed of.

With the other four states we have nothing to do at present; our concern is with our own. And here, like men, we should take our stand and not come into the Union till we can do it with all our rights. Those who are itching for seats in Congress or on the bench of the federal courts may, and probably will, view this subject in a different light. But what say the mass of the people who have no such aspirations to "enlighten" them? Have not New York, Pennsylvania, Ohio, and Virginia greater relative might in the national councils than the smaller states? And if we become a great state, with twenty, thirty, or forty representatives, shall not we have the same advantage? And shall we be in such a hurry to get into the Union that we will sacrifice our greatest rights, merely to gratify a few aspirants for office, as if they were "the only men, and wisdom was to die with them"? And suppose Congress refuse at first to admit us with all our rights—which is not exactly certain—will they always do it? Little Vermont stuck it out like men and gained their point. Is not Wisconsin as good stuff? Pity, if we are not.

A. BRUNSON

SELECTIONS FROM THE POTOSI *REPUBLICAN*

THE CONVENTION—NUMBER OF DELEGATES, ETC.

[October 14, 1847]

The coming sessions of the legislature and of the convention, which it is very well understood it is the object of their meeting to authorize and call together, are becoming the engrossing topics for the consideration of the public of Wisconsin at the present time. The presses of the territory already begin to teem with suggestions of those who are hereafter to fill the seats in the convention and to promulgate the doctrines they would wish to give shape and character to the deliberations of that body. It is not the object of this article to question the correctness of those views, much less the propriety of their being placed distinctly before the people; but it would seem that there is another question, having reference to the action of the legislature now about assembling, which calls for more immediate attention.

At the present it matters little as to the merits or demerits of the rejected constitution—the people decided that point at the polls last April; and it is believed that another important point was equally as well settled in their minds—that there was a radical defect in the organization of the old convention as established by the law of 1846. This is said in relation to the representation fixed in that law and the members that constituted the convention. When the large number of that body was known after the taking of the census in June and the apportionment made by the governor, much was predicted of the evil effects which would result from the action of so cumbersome a body. It is no more than candid now to admit that those suspicions were well founded and that most of the errors which were committed in the convention (and the friends and apologists of their action will not deny that there were many and grave errors chargeable to them) had their origin in the too great number which composed it, giving rise to too wide dissimilation of opinions, the broaching of strange and novel doctrines, and all the evil consequences resulting from such a state of things.

The first important step, then, in this matter of forming a new constitution is that we have a suitable body of men to form that instrument. And as far as that object is to be attained in the one

important point of numbers, it is to be done through the action of the present legislature.

Now we are not of the number of those who think that a very small body of men—say three or five—could frame a constitution better calculated to subserve the interests of the people than any greater number. Such views bespeak a very restricted knowledge of the wants and the rights of the people and are, besides, very far from being democratic. It is in representative bodies, as in everything else—there is a golden mean; they should be neither too large nor too small. They should not be so small as not to admit a full expression of opinion and a fair and adequate discussion of every principle involved, or to render them liable to assailment from combinations or sinister and corrupt influences. They should not be so large as to grow passionate, confused, and anarchical. It is difficult to say which should be most sedulously avoided—the evils that flow from placing great powers in the hands of a few, or from trusting them to the impotency and intemperate zeal of too many. And large bodies, though composed of the best and wisest men, are equally objectionable. "In all very numerous assemblies, of whatever character composed, passion never fails to wrest the scepter from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob."

The foregoing principles are not only very plain to the sense of everyone, but they are about the only ones which should govern in deciding upon the number of which the next constitutional body is to be composed. It is conceded that they have not as direct an application to such a body, as to one clothed with legislative powers; for a convention met for the forming of such an instrument as a constitution partakes much less of the strictly representative character.

A constitution is a charter in which the people are guaranteed their whole rights—a code composed of general principles, and not a law in which each particular section is immediately interested and in which their interests may be diversified and contrary. But all this only shows stronger reasons why the convention to be authorized should consist of a number much smaller than that which met a year ago. Indeed it is difficult to see that the reasons which are usually urged for a large representation in matters of direct legislation are in any very great degree applicable to an assembly met for the object of forming a constitution.

It is presumed that no one wishes to see any men in the convention except those of ability and decided worth. It is also evident that beyond a certain point the chances for obtaining men of such a stamp grow much less as the numbers increase. The number of men of requisite talents and experience who can be induced to enter such a body is not large in a newly settled country like our territory; and the most populous counties would not probably be as faithfully or efficiently represented by fifteen or twenty delegates as they would by a number one-third or one-fourth as large. These views may seem invidious to some, but it is believed that they are nothing more than a correct expression of the general public sense.

But these are not the only respects in which a small convention, not exceeding one-half the number of the old one, is preferable. The expense, of course, is diminished proportionately or very nearly so, to the number that composes the convention. And this saving will be felt not only in the decreased daily expense, but also in the fact that they will accomplish the same amount of business in a much shorter period. It is conceded that very large bodies of men do not act with that decision, promptness, and energy with which smaller ones do. A duty such as that, for instance, of an important committee is never discharged with that vigilance and devotion when placed in the hands of a dozen, as when three or four are charged with it. Further, the difficulty of settling those nice questions in which concession and harmony are required is greatly enhanced as we commingle a greater diversity of elements, and strengthen the innovating and radical by adding to their numbers. A man who would retire quietly into his seat and do it honor, after having perhaps once or twice given vent to his newfangled whims, might throw commotion into the most reasonable body of men when seconded by a few spirits as visionary and imprudent as himself.

But the reasons which lie at the foundation of the views above set forth are so apparent to the good sense of the whole public that it would be useless to extend them further at this time. Now if they are correct—and we cannot but think that they are—does it not behoove the press to spread them before the people and the legislature about to meet, so that their good effects may be realized in the action which is soon to take place? Particularly is this the duty of the Democratic press, seeing that so large a portion of those about to assemble are from the party in which they minister.

The newspapers of our country are often made responsible at the bar of public opinion for much that takes place in public bodies,

whether for good or evil. Should not the Democratic papers of the territory see to it that they speak forth manfully and in all truth upon every point which shall arise in the progress of this constitutional question? By so doing, whatever may be the result, they will escape the blame of their friends and leave the party unharmed and whole, a thing which all must most anxiously desire.

REASONS FOR SUPPORTING THE NEW CONSTITUTION

[February 10, 1848]

We place before our readers today the constitution which is the result of the labors of the last seven weeks at Madison. We do not propose at the present time to enter upon a lengthy examination of its merits but merely to call the attention of our citizens to its various provisions and throw out a few of those reflections which to us seem proper in forming an opinion of it as an entire instrument. To those who have noticed the debates in the convention it is apparent that nothing of a party coloring has been given to any of its features; and upon examining those few articles that were capable of receiving such a tinge, nothing we apprehend will be met with to offend the most fastidious in this respect. This result might have been expected, when we know that such a thing as a party vote can scarcely be found in the journals of the convention, and in view of the spirit of compromise and fairness which characterized all its deliberations.

One thing at least is certain—the people of Grant County have infinite reason to rejoice over its superiority to the constitution of 1847, and to feel satisfied with the reproof which they gave at the polls to that instrument. We repeat it—the improvement is a matter of rejoicing to those who were heedless of the argument last spring that we could not obtain a better constitution by a new effort.

The result is before us; and we are now able to demonstrate the expediency of abiding by the right. We do not mean by this to say that we have got in the present instrument all that the citizens of Grant deemed necessary to form a perfect constitution, but that we have rid ourselves of many of the most odious features of the old constitution and, by compromise, secured some wholesome modifications of other less objectionable parts. The west has not only maintained her rights in the convention, but she has secured many of them permanently in the present constitution. No part, perhaps,

of the rejected constitution was more objectionable to the citizens of the county than the boundary which it gave us on the northwest, from the evil effects of which we are now secured. We have not only now all that we asked for before, but even more; and we may feel thankful to the exertions of our western delegation, who did not forget the source of their authority. Nor is this all; believing that industry, integrity, and confidence between man and man are essential to the best interests of every society, and that every obligation and trust which is entered into among men should be sacredly and to the extent of their means fulfilled, the citizens of Grant County did not deem it necessary to destroy the foundations of human credit or to shield men from the performance of their duty and reward them for their indolence and villainy.

They thought that domestic confidence and the preservation of those relations between man and wife which God himself has ordered from our very nature important to the well-being of every community, and did not deem it necessary to change the offices of the sexes or place man under the tutelage of petticoats. In these two latter particulars, the rejection of the article on exemption and the rights of married women, we deem ourselves particularly fortunate—and we thank the convention for having left the matter to the discretion of future legislation as well as for the compliment which they have paid to the people of Wisconsin in their just appreciation of their character.

The legislative article is a decided improvement on the old one, if for no other reason than the one that it is considerably smaller in its organization. Had it been still fewer in numbers, it would doubtless have suited many better; but we must regard it as a very just compromise of the two extremes that are found for large and small representation. The important article on the suffrage may not coincide in all respects with the views of the citizens of Grant County; but we have come to a conviction which in the minds of the well-thinking is perhaps of more importance, and that is that it is in coincidence with the wishes of a majority of the people of our territory. Whatever may have been thought at the close of the old convention, there can be no question now that a large majority of the voters of the territory are in favor of provisions for suffrage at least as liberal as those embodied in the present instrument. We might speak in the same manner of other articles: for instance, the judiciary and those on state indebtedness and internal improve-

ments. The decided superiority of the present judicial system over the old one, in every particular, will render it satisfactory to all who care for this head; and as for the others, they have the approval of a large majority, no doubt.

But we have no time for lengthy comment now and only wish to hint at some of the reasons for giving our approval to the new constitution. We presume that no one is so unreasonable as to look for an instrument in all particulars suited to his own conceptions and that all are willing to grant as much to others as they ask from them. We approve the constitution because we believe it to be accordant with the views of a decided majority of the citizens of our territory; and we cannot conceive a better reason for giving it our hearty support—which we shall give in the confident hope of its adoption. We shall hereafter give our views upon the various provisions of the constitution, separately, and at some length.

SELECTIONS FROM THE PRAIRIE DU CHIEN *PATRIOT*

VIRTUES OF THE CONSTITUTION

[February 15, 1848]

This document which has been so anxiously looked for since the meeting of the last convention has finally been promulgated to the people, and as we gave it to our readers we felt to congratulate ourselves and the citizens of Wisconsin, generally, that though the spirit of progress was manifested in the former convention, it was more rationally evinced in the latter. The change from a territorial to a state government is a very important one; and upon those principles which we adopt as the fundamental ones of our state, depends the question whether we improve our condition in removing our dependence upon the general government and assuming state sovereignty. With this fact the citizens of Wisconsin seem to have been forcibly impressed, as is shown by the large majority by which the old constitution was voted down. The old constitution contained articles that were locally and generally obnoxious, having some valuable principles; but these were so merged in those of an evil tendency that their good qualities were scarcely to be seen. It was rejected and thus arose the democratic principle—shall our delegates act according to the will of the people? Hence the great interest in the convention that has just closed its labors. Circumstances were every way more auspicious to a favorable result in the last convention, containing more talent, fewer members, less partisan feeling, and the will of the people impressed upon their minds as a guide to their deliberations. The end has shown this, in forming a constitution that we hope and believe will be adopted by a very decisive vote.

It is needless for us to point out the many excellencies in the present constitution before the people, as they are to read and judge for themselves; but upon perusal we find none of those ultra radical principles which so signally condemned the former one. The existence of the article on the "rights of married women" terminated with the election on the sixth of April last; nor did the last convention see proper to raise it from the dead. The provision in relation to banks is where it should be—left to legislation and the people. By a majority of the votes of the state approving banks, the legis-

lature may form a charter for a bank; and if upon its being submitted to the people they approve it, a bank may be established.

No exemption article is embraced in the present constitution; but it is provided that the privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure on sale for the payment of any debt thereafter contracted. The principle of exempting a reasonable amount of property from seizure by the creditor is recognized in every state; and this same principle we see is engrafted as a fundamental one in this constitution, though the details are wisely left to future legislation.

The suffrage article seems to us liberal and wise. All white male persons twenty-one years of age, residents of this territory and citizens of the United States, and those who have declared their intentions to become citizens, may vote for or against the constitution, on the second Monday, the thirteenth of March next. And every male person is a qualified voter at any election who is of age and has been one year resident here and belongs to any of the following classes: white citizens of the United States; whites of foreign birth who have declared their intentions to become citizens; persons of Indian blood declared citizens by Congress; civilized persons of Indian descent, members of no tribe.

Inasmuch as the constitution is a fundamental law and should not be subject to frequent changes, the article on amendments provides that no amendment can take place unless it is the express wish of the people; by being proposed by two successive legislatures and such specified amendment approved by the votes of the people; or if a majority of both houses of the legislature recommend a convention to revise the constitution, and [this] is approved by the people, then such convention is called. Thus we see that fundamental changes are placed beyond the reach of any sudden ebullition of feeling, prompted by whatever motive; and the deliberate action of both legislature and people is required to effect a change so important.

Judges are made elective by the people; and the assertion that freemen are not as well qualified to elect their judges as other officers seems to have obtained but little credit in convention. This we esteem as a decided improvement upon the formation of the judiciary and an increased confidence in the acts of the people. We are not aware that any state has a better organization in any de

partment of the judiciary; and power for the extension of its efficiency and usefulness is amply conferred upon the legislature.

The most ample provisions are made for schools; and the school fund will be large. The legislature is authorized by law to establish district schools, which shall be free to all children between the ages of four and twenty years. Proper officers for the superintendence of schools are established; and every encouragement is extended to education, upon the general diffusion of which depends so much the prosperity of any state.

As to our own county and district, we have every reason to rejoice for the advantages possessed by the provisions of this over the other constitution, which have been secured to us by the indefatigable exertions of our delegate from this county. The state boundary on the northwest is fixed at Rum River; gives us a more central position in the state; and with Chippewa, La Pointe, and the flourishing county of St. Croix we shall have a fair show for representation in the legislature north of the Wisconsin River. Under the former constitution this and Richland County were entitled to one assemblyman; under the present, this and Chippewa are united for one assemblyman, the advantages of which all can see. Under the former constitution Crawford, Chippewa, St. Croix, La Pointe, Richland, Portage, Sauk, Winnebago, and Calumet were entitled to one state senator; under the present, the four first are entitled to the same, being five counties less for one senator than under the old apportionment. We have reason to thank our delegate for his perseverance in obtaining the Rum River boundary and our present representation; and we are confident that our citizens will approve of the constitution for the special advantages and general happy provisions.

PART III PROCEEDINGS OF CONGRESS

THE CONGRESSIONAL GLOBE

ADMISSION OF WISCONSIN

[May 9, 1848]

On the motion of Mr. Smith of Indiana the House resolved itself into committee of the whole on the state of the Union (Mr. Cobb of Georgia in the chair) and proceeded to the consideration of the special order, being the bill for the admission of the state of Wisconsin into the Union.

The bill, having been read through, was taken up by sections for amendment. The first section is in the following words:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the state of Wisconsin be, and is hereby, admitted to be one of the United States of America, and is hereby admitted into the Union on an equal footing with the original states, in all respects whatever."

Mr. Smith of Indiana moved to amend it by adding at the end thereof the following:

"With the boundaries prescribed by the act of Congress approved August 6, 1846, entitled 'An Act to enable the people of Wisconsin Territory to form a constitution and state government, and for the admission of such state into the Union.'"

He said the committee on territories in reporting this bill had conformed to the boundary fixed by the act of Congress of August 6, 1846, making the St. Croix River to be the starting point, to which the convention of Wisconsin had given its assent, though preferring another some fifteen or twenty miles farther east.

An explanatory conversation ensued between Mr. Smith and Mr. Thompson of Mississippi, in relation to the conformity of the proposed line with that fixed by the constitution of Wisconsin, which Mr. Smith affirmed.

Mr. Smith of Illinois then moved to amend by striking out all after the word "with," in the first line of the amendment, and inserting the following as the boundary of the state:

"Beginning at the northeast corner of the state of Illinois, that is to say, at a point in the center of Lake Michigan where the line of forty-two degrees and thirty minutes of north latitude crosses the same; thence running with the boundary line of Michigan through

Lake Michigan and Green Bay, to the mouth of Menominee River; thence up the channel of said river to the Brule River; thence up said last mentioned river to Lake Brule; thence along the southern shore of Lake Brule, in a direct line, to the center of the channel between Middle and South Islands in the Lake of the Desert; thence, in a direct line, to Trout Lake; thence, in a direct line southwesterly, to the highest peak of Mountain Island, which, according to Nicolet's map, is about where the forty-fourth degree of latitude crosses the Mississippi; thence down the main channel of said river to the northwest corner of the state of Illinois; thence due east, with the northern boundary of the state of Illinois, to the place of beginning, as established by an act to enable the people of Illinois Territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states, approved April 18, 1818."

Mr. Bowlin said the boundary proposed by the gentleman from Illinois was neither the boundary fixed by the constitution of Wisconsin, nor that fixed by act of Congress, nor yet that recommended by the convention of Wisconsin; and he could see no reason for such a reduction in the size of the new state. It was not disproportioned with other states of this Union as Congress had agreed to bound it. It differed but little from New York or Pennsylvania and was much smaller than Missouri. There was nothing, then, that he could see to recommend the line of the gentleman from Illinois, which, if adopted, would establish an unnatural boundary and for some time keep the state of Wisconsin out of the Union. He proceeded to point out the different propositions for the division of the territory of Wisconsin; cited the act of Congress authorizing the adoption of certain boundaries; reminded the House that Wisconsin, in pursuance of the assurance which Congress had given, had proceeded to elect her state officers; and he hoped, therefore, that she would not be repulsed by the adoption of this amendment.

Mr. Smith of Illinois defended his proposition to amend on the ground that it was a convenient line and would avoid the objection to the others that they brought people into the new state who had no interest in common with those who live in the state as he defined it. From St. Croix to Madison, the capital of the state, was a distance of five hundred miles, which the inhabitants of the valley of St. Croix would have to travel to get to the seat of government. To compel them to endure these hardships would be gross injustice, to which they should not be subjected.

Mr. Tuck could readily perceive that this was an important matter to the people living on the St. Croix River, and therefore the House should pause before it committed an act that might injuriously affect those people for several generations. He examined the propositions presented to the committee and expressed his preference for that of the gentleman from Illinois. If this amendment were adopted, the convention of Wisconsin could conform to it in a few weeks; and no great inconvenience would be sustained by them until the new line was ratified.

Mr. Tweedy expressed great surprise that such an amendment should have been offered. He contended that this House had no right to entertain and discuss such an amendment, and that it was insulting to the dignity of Wisconsin. He recapitulated the terms of the Ordinance of 1787 and the act for the division of the Indian territory, defining the boundaries of the fifth state to be formed therefrom, and complained that an attempt should be made to vary from well-established positions. If the territorial limits were now to be changed, it must be done by a common agreement between Wisconsin and the United States, and not by an act of Congress alone. Two years ago the Congress of the United States passed an act proposing a line for the boundary of the state, to which she acceded. The compact was complete. And now, having complied with those terms, she was ready to come into the Union. She had a population more than three times the requisite number, and she had not anticipated at this time any further obstacle. He did not think it became him now to go into the discussion of this amendment. It was useless to discuss what could not be disturbed. He proceeded, somewhat in detail, to reply to observations of gentlemen who had preceded him and more particularly contended that, irrespective of the objections to which he had alluded, the division proposed by the gentleman from Illinois was unequal, unjust, and would be unacceptable to the people of Wisconsin.

Mr. Vinton said when the law of 1846 was introduced into the House he had taken some interest in the bill, and he had at that time been of opinion that the boundary line ought to run nearly where it was now proposed by the gentleman from Illinois (Mr. Smith); but Congress fixed upon a different boundary, running along the St. Croix River. This had been submitted to the convention of the people of Wisconsin, who had assented to it, and he held that in good faith Congress was still bound by that act. His own personal impression had been, and still was, that a line farther

south would have been preferable, but he thought we could not now alter what we had proposed without a violation of the public faith. The people of Wisconsin, though according to their own showing they would prefer a boundary farther north, had expressed their willingness to abide by the line laid down by Congress, and it was now too late for Congress to go back from its own proposition on grounds of mere expediency.

There was great force in what had been said by the delegate from Wisconsin; Congress was in the hands of the people of Wisconsin, not Wisconsin in the hands of Congress. The Ordinance of 1787 provided that as soon as there was a population of sixty thousand souls in any one of the territories erected northwest of the Ohio, it had the right to erect itself into a state and to come on equal terms with other states into the Union; and Congress had no power to exclude it. The right was irrepealable except by the consent of Wisconsin itself.

When that ordinance was passed nobody knew the country or had any idea how very large a state would yet remain to be formed. When Michigan was admitted the matter was better understood; and Congress, to prevent Wisconsin from forming too enormous a state, had extended Michigan to both sides of the lake. Nothing could possibly be more inconvenient; but it was done on the principle of equalizing the states to be formed. When the country was better known it was discovered that the western side of Wisconsin would be some eleven hundred miles in length. Congress thereupon proposed to her to divide that distance and take limits not so extended, and Wisconsin had consented. But should Congress refuse to stand by the boundary it proposed to her, she could come in entire, on her own right under the Ordinance of 1787, and Congress could not hinder her. She might do so this very session, if the session lasted long enough, and she would then be an empire state half as large as France. It would be better to take her at her word and stand to the limits we had ourselves proposed.

Mr. Wilson now made a speech which showed him intimately acquainted with the geography and local interests of every part of the territory, but of which, without too much local reference, we can present only an outline.

The committee were aware of the terms under which the United States held the Northwestern Territory by the grant of Virginia, and also the terms of the Ordinance of 1787; but the provision in that ordinance as to a line drawn due east and west from the south-

ern extremity of Lake Michigan had been disregarded. The northern line of Ohio had been run nearly in conformity with that line; but Indiana had gone above it; and Illinois had extended her territory still farther north of it, so as to leave a belt between that line and her northern boundary of sixty miles in width. As this had been agreed to both by the inhabitants and by Congress, he admitted it to be all right and proper. There had been difficulties between the states as to their boundary lines, but these had all been finally compromised.

After stating the three lines which had been proposed as the northwestern boundary of Wisconsin, he gave it as his judgment that that which had been assented to by the last convention of the people was, upon the whole, the best. He preferred that either this should be adopted, or the line described by the delegate (Mr. Tweedy). There was but little difference between the two; either of them would secure all that was valuable to the new state. He described the local differences between different portions of the territory in point of fertility, which was greatest along the immediate borders of the streams. He dwelt on the excellence of the country and of the Mississippi, and its capacity to maintain a dense population, and spoke of the necessity of preserving the Ojibway and Ottawa Indians on the headwaters of the Mississippi.

The line to which the convention had assented would avoid separating the people who inhabited the valley of the St. Croix River.

Mr. Smith of Illinois inquired whether the delegate from that district in the convention had not protested against that line.

Mr. Wilson admitted that he had, but explained the reasons which had probably operated at the moment, and insisted that the general and permanent advantage of the future state was to be looked to, and not local and temporary prejudices and interests.

Mr. McLane spoke with much interest on the bill, warmly opposed the amendment proposed by the gentleman from Illinois (Mr. Smith), and advocated the boundary which was declared to be preferred by the people of Wisconsin in their late convention. He went into a history of both conventions, the rejection of the first boundary and constitution, and the adoption of the second. The people obviously preferred the most northerly and westerly line, by Rum River, though, from the fear of still further delay, they had been afraid to insert it in their act. He contended for keeping the valley of the St. Croix as an entirety, and taking in the west bank of that river.

Mr. Vinton wished to know whether the gentleman's line west of the St. Croix would not include all the people there now.

Mr. McLane replying in the affirmative, Mr. Vinton said that there would then be no nucleus of population for the territory of Minnesota. There was already a courthouse on the west bank.

Mr. Tweedy said the great mass of the people of Wisconsin would prefer a boundary line north of the St. Croix.

Mr. McLane resumed and went into a recital of the reasons which had influenced Congress in fixing the present boundary of Michigan, though it was allowed at the time it would be doing great injustice to the future population of Wisconsin. The fear had been that Wisconsin would form too large a state.

The St. Croix was the best river in the territory and the only one which watered a fertile country: those which ran north into Lake Superior passed through a region comparatively sterile.

He observed that the whole legislation of Congress in relation to the territories rested on a very doubtful foundation. This had been admitted by the best jurists. And he held that Congress ought to be very careful how they trenched upon the right of a people to make their own laws. While gentlemen on the one hand held up the Ordinance of 1787 as the ground of the right of Congress to make laws for the people of the territories and to tax them, it was now, on the other hand, proposed to violate that ordinance in fixing the boundary of one of them rather than allow Wisconsin to have the entire St. Croix valley.

Mr. Sawyer briefly advocated the boundary as proposed by Congress and assented to by the people of Wisconsin in convention. The delegate from Wisconsin himself was willing to take this line.

Mr. Tweedy said he preferred the northern line as the best, but would take this as the second best.

Mr. Sawyer said, if so, he thought the true policy would be to take the middle line, and not to throw back this question once more. This would leave more territory for Minnesota at the south, the northern and western portions of it being in a great degree unfit for habitation.

Mr. McLane reminded Mr. Sawyer that the convention had themselves stated that they would prefer the northern line.

Mr. Sawyer: Yes, because it would give them a little more territory, and, if they could get this for asking, no doubt they would take it; but they were willing to take the middle line, and for that he would vote.

Mr. Gayle, without stating which of the lines he would himself prefer, was opposed to any amendment now being made to the constitution Wisconsin had accepted. He drew a parallel between the case of the admission of Wisconsin and the admission of Texas. Texas had demanded the recognition of the Rio Grande as her southwestern boundary, and Congress rejected her on that ground. Texas had then agreed to leave this question open for negotiation, and Congress had then received her. Congress had not violated her faith with Texas: why should she with Wisconsin? Was there any difference, in point of obligation and national faith, between a joint resolution and a treaty? Were they not equally sacred? We had prescribed the conditions on which we would receive Wisconsin; she had accepted them; and now ought we to insist on others? It would be a violation of good faith. The act had been for the admission of "the state of Wisconsin," not the territory of Wisconsin; Congress had, therefore, recognized her as a sovereign, independent state before her admission. Now, the constitution did not compel Congress to admit new states, nor new states to come into the Union; and Wisconsin might remain without, throw herself on her rights, and set up an independent empire. It was not to be expected that two hundred thousand people would long be kept in territorial bondage. She had a right to repudiate the United States government, refuse to be taxed by it, and erect herself into an independent power. He threw these thoughts out for consideration.

Mr. Smith of Illinois said it was with reluctance that he made any remarks upon the bill under consideration. He had not given the subject that investigation its importance demanded and felt himself unable to do justice to the question. He had seen and conversed with a number of very intelligent young men who had lived for a number of years in the vicinity of the falls of St. Croix, and he knew the aversion they had to being included within the state of Wisconsin. The boundary proposed by his friend, the chairman of the committee on territories (Mr. Smith of Indiana) divided the settlement upon the St. Croix River and compelled those living on the east side of the river to travel some four or five hundred miles to reach the capital of Wisconsin, and forced them into a state and community where they had no interests or feelings in common with those among whom they were thrown. They consider it unjust to disregard their interests and wishes, and they never will make good citizens of Wisconsin. Mr. Smith said he had listened with

attention to the remarks of the honorable gentlemen who were in favor of the St. Croix River as the boundary, and to those in favor of the extreme northern line being that of Rum River; but they had failed to convince him that either of those lines was correct or judicious. He admitted the position taken by the honorable gentleman from Ohio (Mr. Vinton) that Wisconsin had the right to demand admission into the Union under the Ordinance of 1787 and come in as a whole, in the event of their not accepting such line as Congress might propose; and, for himself, he would prefer including the whole territory within the state, and providing that they might hereafter divide it into two states, rather than consent to an unjust and unequal division. Wisconsin Territory contains, by computation, 90,000 square miles and would make two states larger than the great state of Ohio. He was informed that, by a calculation made by Mr. Wilson, the able and efficient clerk in the General Land Office having charge of the surveys in that region, the state of Wisconsin by the line he had proposed would contain nearly 47,000 square miles. This calculation, it was not to be presumed, could be precisely accurate, but there could be no question that it would be as large as the state of Ohio.

Mr. Smith said he would call the attention of the committee to the statement of the honorable delegate from Wisconsin (Mr. Tweedy), who admitted that, as a delegate in the convention, he would have advocated the southern line—the one he (Mr. Smith) had proposed; still, as a delegate on this floor, he advocated the northern line. He admired the devotion of the gentleman from Wisconsin to the will of his constituents, as expressed by the constitutional convention of Wisconsin. He was carrying out the doctrine of instructions, which was the correct course for him to pursue. But Mr. Smith would call upon the committee to remember that the judgment of the gentleman was on the side of the southern line, although he denies here our right to interfere at all with the boundary. Congress certainly has the right to stipulate as to boundary, or to compel Wisconsin to come in as a whole; and he had no doubt but that they would accept an equitable division rather than be forced into a state of such unwieldy dimensions. Great stress was laid upon the action of the constitutional convention which fixed the boundary. Gentlemen should recollect that the settlers in the valley of the St. Croix had little voice in that convention. The more densely populated southwestern portion of the

territory had entire control in that body and could fix any line they pleased. The delegate from the St. Croix region (Mr. Brownell), a very intelligent and highly respectable gentleman, and one who by his profession and residence in the country entitled his opinions to great weight, fought manfully to protect the interests of those whom he represented. Mr. Smith sent to the clerk's table the minority report made by Mr. Brownell in the convention on the boundary question:

"The first line (that adopted by Congress) divides the settlements along the St. Croix, which are identical in interest and closely connected by business and other relations, into two portions, retaining one within the limits of Wisconsin and transferring the other to the new territory of Minnesota. This line would be, in all respects, an unnatural and inconvenient one, severing those whom association has joined together, establishing different jurisdictions on the opposite sides of the same stream, and opening the door to conflicting legislation and clashing interests. Of the three lines proposed, this would be the most obnoxious to the people of the St. Croix valley.

"Nor would the plan of carrying the boundary line fifty or sixty miles northwest of the St. Croix to the mouth of Rum River be much more acceptable. It would indeed keep the settlements of the St. Croix together, but it would attach them to a government from which, by reason of the distance which intervenes between the settlements and the capital, they could derive but little advantage. The principal settlements on the St. Croix are near two hundred and fifty miles above Prairie du Chien and some four hundred from Madison, the seat of government in Wisconsin, to say nothing of the still greater inconvenience to the people living on the south shore of Lake Superior. In the spring, summer, and fall, access is obtained to the settlements on the St. Croix by the Mississippi; this [sic], in the low stage of water, the navigation is greatly obstructed, and the transportation of passengers and goods is rendered difficult, tedious, and expensive. During the winter season, say for more than four months in the year, this avenue is closed, and the inhabitants of the valley of the St. Croix are in a good measure cut off from all communication with their fellow citizens in the southern and thickly-settled portions of Wisconsin. There is no road on either side of the Mississippi leading to the St. Croix country; and there is no probability of one being made for

some time to come. The country intervening between the St. Croix and Black rivers, a distance of one hundred and forty miles, is of a forbidding character. Except in the immediate valleys of the streams, there is but little good land; while pine barrens, tamarack swamps, and innumerable marshes and lakes cover the face of the country and render the prospect of settlement remote and doubtful. This broad belt of waste land constitutes a barrier almost impassable between the settlements on the St. Croix and the nearest ones in Crawford County. Is not the simple statement of this fact sufficient to show the impropriety, not to say injustice, of attaching the St. Croix country to Wisconsin? Is it reasonable to ask the inhabitants of that remote region to come under the rule of a government from which they are so distant that they can take but little interest in its concerns, and derive but little benefit from its protection? In further illustration of this point, the undersigned respectfully refers to the report herewith submitted, of a select committee of the constitutional convention on the subject of boundaries.

"It remains to speak of the third line, which is the one proposed by the late convention. The principle which led to the adoption of this line, viz., the desire to consult the wishes and convenience of the people along the St. Croix valley, meets with the hearty concurrence of the undersigned. But in conformity to the views of those whom he represents, he would respectfully propose to bring the line still farther to the eastward, by which, while no additional settlements or population of great amount would be cut off from Wisconsin, a more convenient line would be adopted for the division of our territory into two states (still leaving 47,000 square miles to the new state of Wisconsin, exceeding even the state of New York). A very strong and, as it seems to the undersigned, a conclusive argument in favor of the proposed change, is to be found in the fact that its adoption would leave population and territory enough on the north and west of Wisconsin to form in a very few years another state; while if the line of Rum River, as proposed by the majority of the committee, or of the St. Croix River, as prescribed in the act of Congress, should be agreed upon, a long period must elapse before the settlements would be sufficiently numerous to warrant the establishment of another state on our northwestern border."

Mr. Smith contended that this report showed clearly the injustice of fixing the northern line, or even the line of the river

St. Croix; and he called upon the committee to protect the rights and interests of a small minority from being trampled upon by an overgrown majority. To the honorable gentleman from Maryland (Mr. McLane) who advocated the northern line and who spoke of the interest and influence of capitalists at the falls of St. Croix, and that a more southern line might be better for these gentlemen, he would say—to all those who had served with him in the Twenty-eighth and Twenty-ninth Congresses he need not say—that in all cases where the interests of the masses were to be subserved, he had always been found aiding, to the extent of his ability, in protecting and advancing their interests; his sympathies were with these men and not with the capitalist or the speculator. He had also in too many instances shown his devotion to the interests of Wisconsin, for anyone to doubt his friendly feeling towards that state. His present course was dictated by what he deemed to be just to all parties interested. When the bills were under consideration for the admission of Florida and Iowa, he had proposed an amendment ceding the lands to those states as soon as they had paid into the treasury a sum equal to the cost of said lands to the government, and the expenses of surveying and selling the same; and he would cheerfully offer a similar amendment to the bill admitting Wisconsin, if there was any prospect to the bill that it would pass.

Mr. Houston of Delaware opposed the amendment and advocated the middle line, to which the convention had given its consent.

He went into a history of the Virginia grant of the Northwestern Territory and her first restriction as to the size of the states to be created out of it. This she had abandoned at the request of Congress and had agreed to new conditions—one of which was that the territory should not be divided into less than three nor more than five states. And before we could divide Wisconsin at all, he contended that we must have the consent of Virginia, as to make six states out of this territory would be a violation of our compact with her. Whether that compact had been superseded by the adoption of the Constitution was a question still open; it had never yet received an official adjudication.

He was unwilling to cross the wishes of the people of the territory and was prepared to receive her entire at any time. The people of Wisconsin were well qualified to judge as to what would best promote their own good. He considered Congress as a good deal in the dark on that subject.

Mr. Dickinson moved that the committee rise; which motion prevailing, the committee rose.

And the House adjourned.

ADMISSION OF WISCONSIN

[May 9, 1848]

On motion of Mr. Smith of Indiana the House resolved itself into committee of the whole on the state of the Union (Mr. Cobb of Georgia in the chair) and resumed the consideration of the bill for the admission of the state of Wisconsin into the Union.

When this bill was taken up yesterday, Mr. Smith of Indiana moved to amend the first section by adding at the end thereof the following:

"With the boundaries prescribed by the act of Congress, approved August 6, 1846, entitled 'An Act to enable the people of Wisconsin Territory to form a constitution and state government and for the admission of such state into the Union.' "

And Mr. Smith of Illinois moved to amend the amendment of Mr. Smith of Indiana as follows:

"Beginning at the northeast corner of the state of Illinois, that is to say, at a point in the center of Lake Michigan where the line of forty-two degrees and thirty minutes of north latitude crosses the same; thence running with the boundary line of Michigan through Lake Michigan and Green Bay, to the mouth of Menominee River; thence up the channel of said river to the Brule River; thence up said last mentioned river to Lake Brule; thence along the southern shore of Lake Brule, in a direct line, to the center of the channel between Middle and South Islands in the Lake of the Desert; thence, in a direct line, to Trout Lake; thence, in a direct line southwesterly, to the highest peak of Mountain Island, which, according to Nicolet's map, is about where the forty-fourth degree of latitude crosses the Mississippi; thence down the main channel of said river to the northwest corner of the state of Illinois; thence due east, with the northern boundary of the state of Illinois, to the place of beginning, as established by an act to enable the people of Illinois Territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states, approved April 18, 1818."

The first question before the committee today was on agreeing to the amendment of Mr. Smith of Illinois.

Mr. Dickinson recited the provisions of the amendments pending—the northern boundary, provided by that of Mr. Smith of Indiana, being the St. Croix, as authorized by the act of Congress of 1846, and accepted by the convention of Wisconsin. Congress having agreed to accept Wisconsin into the Union, and prescribed such boundaries, and Wisconsin having accepted of them, they were bound to them, unless it could be shown that there had been some fraud committed upon Congress, or some mistake sufficiently serious to prevent the consummation of the compact. But if he understood correctly, there was none.

The great objection to the admission of Wisconsin as a state was that the territory was too large. The objection that those residing in the valley of the St. Croix would be put to serious hardship and inconvenience was of some weight; but this was an objection which would always be largely exaggerated in a new country. He referred to similar inconveniences which had been anticipated of a formidable character at the time of the admission of Ohio, but which had disappeared with the progress of improvement and settlement.

Wisconsin had the same power to prescribe her boundaries that Congress had; if Congress did not agree to the boundaries she was willing to accede to, she had the right to remain as a territory. She had formed a state constitution; she had made all the preparations for coming into the Union as a state; suppose Congress did not confirm this line and proposed a new one, which she should refuse to accept; would she be governed in the meantime by the laws of the state for which she had formed her constitution, or the laws of the territory? Would she go on to elect her governor, legislature, and various officers under state authority, or must she be thrown back upon the territorial government, and be governed by territorial judges, governors, and other officers? He concluded not; but that if Congress disagreed to her proposition, she would have the right to act independently of the general government, so far as her internal police and general legislation were concerned; and that she would be subject to the laws of the general government, so far as the states were subject to them, and no further.

He further argued the superiority of the line proposed by the committee over that proposed by Mr. Smith of Illinois—the former

having been proffered by Congress in 1846, having been accepted by Wisconsin, and being now asked by the territory through her delegate on this floor. If they were now for the first time acting upon the question of the line, he would prefer a southern line; but as it was, he considered that Congress were bound by every sense of reason, justice, and consistency to adhere to the line proposed by them and accepted by Wisconsin.

He noticed the objection to the bill, that it violated the Ordinance of 1787, which prescribed that five states should be formed out of the Northwestern Territory—this being the sixth. He did not consider that ordinance binding; it never had been so considered by the people northwest of the Ohio. It had always been disregarded by the state of Ohio. Why, one important provision of that ordinance was that slavery should not exist there; and others, that all the inhabitants of the territory should enjoy the right of habeas corpus, of trial by jury, and all the rights and privileges of citizens of any other portion of the Union; and the very first thing that Ohio did when she became a state was to disregard some of these important provisions. She disfranchised all Africans, disregarded the ordinance with reference to the right of trial by jury, passed laws prohibiting the immigration into that state of free persons of color; went still further, and prohibited the blacks from testifying in courts of justice in cases where white persons were parties. Some of these laws had been continued on the statute book until this day. They had never regarded the principles of that ordinance since the state was formed; nor was Congress going to regard it; they were going to disregard it now in receiving Wisconsin into the Union.

It was possible that Illinois was much larger than she ought to have been, and Indiana also, and he knew not but Ohio too. But we had, in relation to the Northwestern Territory, often disregarded that ordinance. It was held by some gentlemen that Congress had the right to resort to special legislation for these territories; but he held that they had not. He held that so far as general legislation was concerned, the territories not being in Congress, it necessarily remained with the people of the territories, and, to exercise this legislative power over such territories, the consent of the inhabitants must in the first place be obtained. If the territory consented to the legislation of Congress, it then became constitutional. He laid down the position that Wisconsin could forever re-

main in a territorial state if she should be pleased to do so, without the aid or action of the general government, except so far as related to general laws. She could adopt a state government; she could elect her own judges and manage her own affairs. All the territory northwest of the Ohio River had the same right. They could have introduced slavery into those territories, and Congress would have had no right or power to interfere. The provisions of the ordinance being superseded by the adoption of the Constitution, the territory northwest of the Ohio River was left untrammeled in its action; and the states carved out of it could either admit slavery or exclude it, as suited their interests.

But, as he had already said, the Ordinance of 1787 had been disregarded, and they meant to disregard it now; this state would come in, and we should also have a sixth, although the ordinance provided that there should be but five states in the Northwest Territory. The adoption of our present Constitution was a virtual revocation of the unalterable provisions of that ordinance; for, by the adoption of the Constitution, those provisions became merged in that instrument, and what was intended as a special provision for this territory was by the Constitution extended to the whole Union. Such, for instance, was the benefit of the habeas corpus act; the right of trial by jury; that good faith should be kept with the Indians; and also the provision that no tax or impost should be levied upon property in its transit through this territory. The latter part of the fourth article of the ordinance was as follows:

"The navigable waters leading into the Mississippi and St. Lawrence and the carrying places between the same shall be common highways and forever free as well to the inhabitants of the said territory as to the citizens of the United States and those of any other state that may be admitted into the Confederacy, without tax, impost, or duty therefor."

The object of this clause was not to make common highways for any other purpose but for the free transit of property through that territory. The adoption of the Constitution provided a remedy for this evil by prohibiting the several states from levying imposts or duties on exports or imports. The reason ceasing, the law ceased; consequently, those streams and the carrying places between them ceased to be common highways.

When the Ordinance of 1787 was adopted the Constitution had not been framed; and at that time there was seen the difficulty of

paying debts and regulating commerce. At that time each state had the right to collect taxes; and until this was provided for by the Constitution, the ordinance operated for the benefit of the people. The provisions of the ordinance, however, were merged in the Constitution.

He concluded, therefore, that they ought to adopt the proposition of Wisconsin without amendment, except it were to take the line proposed to them by Congress in 1846, to which they had assented. He thought so because he thought Congress had no right to take them with any other line than the one which met with their acceptance. They had a right to say what kind of territory they would come into the United States with; and if Congress did not accept the line which suited the people of Wisconsin, they had the right to remain out of the Union. He thought they were bound by the act which Congress had heretofore passed, and they should not now disturb the compact into which they had entered. He certainly would not vote for any other line, unless some better reason could be shown him than any he had yet seen. He hoped this bill would be acted upon as the people of Wisconsin wished. He would not longer detain the House, because he knew there were several gentlemen who desired to express their views upon this subject.

Mr. Collamer said he understood that before he came here this morning, the House had adopted a resolution to terminate debate this day at two o'clock. He would remind gentlemen that, ordinarily, when they had a bill under discussion, and the House fixed a limit to the debate, they never got further than the first section of the bill until the hour to close debate arrived; and that if anybody had any remarks to make on any subsequent section, he must make them while the question was pending on the first section. The time, then, being now limited, it became necessary that he should say what he had to say on other sections at this time, unless he would be content with the five minutes allowed by the rules for the explanation of an amendment, which would not be sufficient for his present purpose. He would say nothing of the first section, for he thought that was pretty well understood, but he felt it to be his duty to make some remarks in relation to the second and third sections, and he would do it at this time because no other time would be afforded him.

The second and third sections, he would here remark, were not necessary parts of this bill, either to admit Wisconsin as a state

or to carry a constitutional government into effect. If those sections were struck out, and the bill were passed without them, Wisconsin could be admitted a state of this Union just as well as if those sections were retained. They were sections which related to the public lands of the proposed state, and they were inserted in consequence of the passage of certain resolutions by the convention of Wisconsin. If gentlemen would turn to the latter part of the document containing the constitution they would find these resolutions, and they would find that they contained requests that Congress would do certain things. Whether they were exactly such resolutions as the legislature of Wisconsin would have passed, if it had been convened, he knew not. They related to grants of land in that state; and he would take this opportunity to explain what they were, that gentlemen who had not examined them might understand them before they were called upon to vote.

The first resolution was to this effect: In 1838 a grant was made by Congress of a tract of land to make a canal to connect Lake Michigan with Rock River. Each alternate section of land was granted, and the price of the remaining sections was elevated to $2.50 per acre. The purpose of that grant, however, had failed and the project had been given up. In the meantime, however, some of those reserved sections were sold at $2.50 per acre. The application of the convention then was that the state of Wisconsin might be permitted to locate the five hundred thousand acres allowed her by Congress on those reserved sections. With respect to the five hundred thousand acre grant, it would be recollected that in 1841, in what was called the distribution law, such a grant was made to each of the new states that had not theretofore received so much land, for the purpose of aiding such states in making internal improvements, with permission to select such lands as were not subject to private entry. Now, inasmuch as the Rock River grant was subject to private entry, and as the projected canal had been abandoned, they asked permission to choose so much of that grant as was necessary to complete their grant of five hundred thousand acres; and to that he could see no good objection.

The next question presented was this: that the purchasers of the reserved sections at $2.50, they having purchased with the understanding that a canal was to be made, should now be permitted to have other lands for the amount paid beyond $1.25 per acre. As they had purchased in good faith, with the expectation that a canal

would be made, and as it had not been made, he saw no good reason why that should not be acceded to.

The next resolution related to another subject. It would be recollected that in our land system five per cent of the money received from the sales of the public lands went to the state in which the lands were sold, for the purpose of making roads. And it was true that this government had some interest in making good roads there, for they helped to sell the lands yet remaining unsold. But by this resolution the convention of Wisconsin asked Congress that they might have the five hundred thousand acres allowed for internal improvements, and also the five per cent on the lands sold for making roads, and that they might have the privilege of appropriating both to the support of schools. The object certainly was a praiseworthy one, and he would throw no obstacle in the way of it, more especially because other states had been allowed to do the same thing.

He came now to another resolution. In 1846 a grant was made to Wisconsin, to take effect when she became a state, of certain sections of land to make a continuous course from Green Bay, by Fox River, thence by Wisconsin River, to the Mississippi. To do this a canal of about a mile, or a mile and a quarter, was a requisite from Wisconsin River at a point where it was navigable for steamboats, to Fox River, and some improvements in the course of the Fox River, Winnebago Lake, and the entrance to Green Bay. The act took effect granting the alternate sections of a tract three miles wide for the purpose of making those improvements, and the reserved sections were raised to $2.50 per acre to make it even. By the last resolution the convention asked the government of the United States to let that grant stand, but to lower the price of the reserved sections to $1.25. To that he could not agree; it was going a little too far; and it was to this more especially that he had risen to call the attention of the committee. He thought a dangerous precedent would be established if this government should acquiesce in this request; and it was to the establishment of such a precedent that he objected more than anything else. It would be a precedent that would have an injurious effect on the many projects which were before Congress and which were more or less meritorious. It would have a tendency to defeat those projects, and it involved a still more important principle. How? The idea of using the public domain for purposes of internal improvements

had been by some entertained from an early period of this government. The internal improvements of a great many of the states had been promoted in that way; but, finally, in 1838, the government came to the conclusion that grants of this sort ought not to be made. Some, under President Jackson's administration, viewed such grants unconstitutional; and they insisted that such grants should be stopped altogether, and consequently no more grants had been made for internal improvements since. But many then contended that inasmuch as the money could not be had, the internal improvements could not go on, and that they ought to have the avails of the public land distributed, that they might therewith make internal improvements. It was on that principle that the distribution act was framed. But it would be remembered that in that act a clause was inserted providing that the avails of the public lands should not be distributed to the states if the duties on imports rose above twenty per cent. This clause put it beyond the power of the government ever to distribute anything. They all understood that. Well, what next came up? Why, then came the new states claiming this and that improvement, this river and that road, and then a canal; and grants of public land were made to them for such purposes. Why? Oh, because they could not get money. But was not this an abuse of the elder states? Should the public lands be used for internal improvements in the new states only? The purpose he did not pretend to say was not a good one; but could it be conceived that the old states would submit to such partiality?

Mr. Collamer would merely say that the old states were not prepared for such a principle. They were very willing to make grants out of the public domain to the new states, but not on such a principle as that.

We had entertained another policy by making a railroad or canal through a portion of the public lands, where, owing to deep morasses or extensive prairies, the settlers could get no timber, or to obstacles rendering the country otherwise unapproachable, it could not be settled, and therefore never could be sold. In such cases we had settled one-half of it, and sold that at double price, and so got as much money as if we had sold the whole at the minimum price. It was plain that the government, by granting alternate sections for the construction of such railroad or canal, had, in fact, granted away nothing at all, but, on the contrary, saved the whole

amount it granted. This was not graduation. It was doubling; it was going on an ascending, not on a descending, scale. In such a case the government, it was true, granted land, but it got back the money.

Mr. Houston of Delaware here put a question to Mr. Collamer not distinctly heard by the reporter, but the purport of which may be inferred from Mr. Collamer's reply.

Mr. Collamer replied that the subject of graduation was not understood by him as it was by many gentlemen. "Graduation" was a technical phrase. It referred to the system of classing public lands by the length of time they had been in market, and fixing the price accordingly. The practical effect of which was to induce a man who wanted a certain piece of the public domain to wait awhile, because he would then get it at a lower rate. That was graduation. This had nothing to do with that, nothing at all.

Mr. Collamer now wished to call the attention of the committee to what had been effected by this principle of granting alternate sections, and selling the residue at double price. By this system the Ohio canal, extending from Portsmouth on the Ohio River all through the state to Cleveland on Lake Erie, had been made and the grant never cost the government a dollar. So the [Wabash and] Erie canal, extending from Eel River to the Wabash, and down that river, running all through Indiana and a part of Ohio, had been constructed in the same manner and had cost the government nothing. The extension canal, from Dayton to the Miami River, connected Lake Erie with Cincinnati through the other two. All these canals were now in actual operation. They had all been made on this same principle, and all without costing the government anything at all. So the Illinois canal had been constructed—a work which had essentially aided that state in reëstablishing her credit. The Wabash canal to Evansville had enabled Indiana to redeem her bonds. He might refer to various cases of the same kind. The railroad from Cairo to Chicago had been built on this principle.

But what Mr. Collamer wished to show was that if, after reserving alternate sections of the public land and holding them up at double the minimum price, Congress afterward, by a subsequent law, threw open these reserved sections for sale at the minimum price, the government got nothing back, and the state got the whole. This brought us round again to the principle that the public lands

were a fund for the internal improvement of the new states, but not of the old ones.

The moment Congress assented to the fifth resolution of the convention of Wisconsin, they did just this thing. He did not believe that this could understandingly be done.

He had another objection to that fifth resolution. Nothing had been done on the Wisconsin and Fox River canal. He did not say but that in some cases, through inadvertence, alternate sections had been granted by Congress without doubling the price of the sections reserved. Such a case has happened, he believed, in relation to the improvement of the river Des Moines. He had not then been present, though he had been when the grant was made for the canal between the Wisconsin and Fox rivers. The Des Moines grant had not undergone much examination; and he did not think it constituted any precedent to be now followed.

He would further remark that the state of Wisconsin was entitled, with other new states, to 500,000 acres of the public domain for the purposes of internal improvement, and her convention asked that the avails of this land might be, instead, applied to the support of public schools. To this he had no objection.

In granting Wisconsin alternate sections for the Fox River canal, Congress had said that she might have them, but not that she must. Let the legislature say they declined taking the grant, and then the state would be entitled to her five hundred thousand acres and would not need the help of the government. But she asked to keep her five hundred thousand acres; to keep her five per cent for roads; to keep her Fox River grant; and then that Congress would throw off the additional dollar and a quarter on the reserved sections. The compliance with these requests was in nowise important to the admission of the state into the Union. The first and second sections of the bill might be struck out without disturbing that at all. The provisions in the fifth resolution, however, he would move to strike out (He here designated the lines which must be struck out in order to effect this purpose.) All the residue of the bill he was willing to leave undisturbed.

Mr. Morse said he would avail himself of the apology made by the gentleman from Vermont for discussing other sections of the bill, when, according to strict rule, he could speak only to the first, and would follow the remarks of that gentleman with some words in reply.

He considered that in reporting the bill as it stood the committee on the territories had done no more than an act of sheer justice to the new state that was now about to come into the Union. The gentleman had urged objections to several features in the bill, but had graciously consented to waive them all, provided the House would strike out its compliance with the fifth resolution of the Wisconsin convention, in relation to reducing the price of the reserved sections granted for the canal between the Wisconsin and Fox rivers.

Mr. Morse, after adverting to the general grant of five hundred thousand acres of the public land to each of the new states, referred more particularly to the grant by Congress of alternate sections for five miles on each side of the Des Moines River to aid Iowa, when a territory, in improving its navigation. At the very same session it had made a similar grant to Wisconsin for the construction of a canal to unite the Wisconsin and Fox rivers, but had added a proviso that the reserved sections should not be sold for less than $2.50 an acre. Now Mr. Morse had been in hopes that a gentleman who had so shrewd an eye to every grant made to the new states and who seemed to consider every acre given to them as so much taken out of the pocket of the old states would have shown some good reason for this invidious distinction between two territories whose boundaries were contiguous, and both of whom at the time were just about coming into the Union.

The improvement of the Des Moines River was very important to the now state of Iowa; and it was right to aid her by a grant of land. Was not the canal in Wisconsin equally important to her? Why should she not get a grant on the same terms with her sister state? Until some good reason should be shown for it, he hoped the House would make no such invidious distinction between them. The liberality shown to Iowa had astonished the gentleman from Vermont. But did he not well know that all such grants did but in the end enhance the value of the public domain and eventually increase our landed revenue?

The gentleman objected to the third resolution of the convention, giving to the purchasers of the alternate sections granted for the Fox River canal at double price an equivalent in land after that project had been abandoned.

Mr. Collamer said the gentleman was wholly mistaken; he had not made the least objection to it but had admitted it to be just.

Mr. Morse was glad he had not; nothing could have been more just and fair. He understood the gentleman to have objected, but graciously consented to give up his objection.

Mr. Collamer said he never had made any. The only resolution he objected to had been the fifth.

Mr. Morse considered the reduction in the price of the reserved section, as asked by the fifth resolution, an act of sheer justice to this new state; and it came with an especially good grace, as Wisconsin had agreed to take this grant as part of her five hundred thousand acres.

Mr. Collamer said the gentleman was again mistaken. Wisconsin did not propose to do any such thing. She was willing to take the alternate sections on Rock River as part of her five hundred thousand, but not on Fox River.

Mr. McClernand said there was no need of deducting the sections on the Fox River from her quota of five hundred thousand acres, as that had been already provided for in the act of 1841.

As to the charge of the application of her quota of land from works of internal improvement to the support of common schools, Mr. McClernand presumed there could be but one opinion in regard to it.

In respect to the boundary, he had but a word to say. Three lines were proposed: one to which the convention had assented; another which the people of Wisconsin would prefer; and a third proposed by the gentleman from Illinois (Mr. Smith). He was indifferent as between the first two but he hoped that the House would reject the third, as its adoption would only make trouble and delay. He hoped the House would adopt such a course as would enable Wisconsin to take her place as speedily as possible as the thirtieth state in our glorious confederacy.

Mr. Rockwell of Connecticut (as Mr. Collamer was not in the hall) explained in defense of the positions he had taken, and which seemed to have been strangely misunderstood by the gentleman from Louisiana (Mr. Morse). Mr. Rockwell then indicated his purpose at the proper time to offer a resolution granting to Wisconsin section number 36 in each township of the public land to aid in support of purposes of education. He thought all our new states ought to have larger grants toward this object than they enjoyed under our present land system. They got only one-thirty-sixth of a township for schools and five per cent of land sales for the con-

struction of roads. But in ten years, the taxes from which United States land was exempt, if collected by the state, would amount to four times as much as the new states now received. Probably the indisposition of Congress to do more for them had arisen in part from the inordinate, unfounded claims set up by them on the subject of graduation, and their intemperate threats to the old states. This might have made representatives from the older states a little more sensitive than they otherwise would have been. But the government, as a large landholder, was bound by all considerations of sound policy to promote the establishment of common schools in all the new states. In the Oregon constitution one section out of each township had been set apart to this use. It was a noble provision; it ought to be done in each of the new states. Not only would the state be benefited, but ultimately the entire Union. In his own state there was but one voice on this subject. All her public lands in the Western Reserve had been so applied, the consequence of which was that she enjoyed this day a fund of two millions of dollars for purposes of education; and he had himself never known a native of Connecticut who could not read, nor ever heard of but two who could not write. He was the more in favor of liberality to Wisconsin, because her own course on this subject had been liberal in the highest degree. The adoption of such a course would meet the just demands of the new state and thereby save us from the outrageous projects of graduation which were brought forward from time to time, based on the falsest principles and supported by the most unfounded arguments.

Mr. Rockwell here read his proposed amendment, granting number 36 in each township for the purpose of public schools, with the exception of inchoate preëmption rights.

Mr. Tweedy (delegate from Wisconsin) now obtained the floor and went at considerable length into a discussion of the general subject, and especially into a reply to the objections of Mr. Collamer to the fifth resolution of the convention on the subject of reducing the price of reserved sections of the public lands. Mr. Tweedy said he would not now enter on the question of boundary; on that subject he had made some statements on a previous day. It must be apparent, from the indications of opinion throughout the House, that Congress had no right to impose on Wisconsin the southern line proposed by the gentleman from Illinois, and make that a condition of Wisconsin being admitted into the Union. Mr. Tweedy

knew well the feeling of the people of Wisconsin on that subject. If it were out of self-respect alone, and a just regard to the dignity of the state, the very men themselves who had in convention been most in favor of a southern line would now vote against it. No; Wisconsin would never come as a beggar to the door of this House and sue as a boon for that which was her right. Her people would place themselves in no such degrading attitude. Mr. Tweedy and those associated with him had labored with the people day and night for two weeks to prevail with them to wait and consent to the boundary proposed by Congress in the new constitution; they had had the utmost difficulty in holding back their friends from insisting on the rights of the state. They had planted themselves on the Ordinance of 1787. But at length, with great reluctance, they had consented to waive for the present what all held to be their right. But they came not as the people of a British province, suing at the foot of the throne for privilege of self-government. If they came into the Union at all, they would come into it on a footing of perfect equality with the other states. Wisconsin must come in as a sister, or not at all. On this point men of all parties were as one; every soul in the state was of but one mind. It was vain for gentlemen to try to bring them to any other terms. As to the two northern lines which had been spoken of, gentlemen might fix on which they pleased. The people of Wisconsin preferred Rum River as their boundary; but if the St. Croix route was fixed on by the House, they were ready to acquiesce. He would say that he had been instructed to advocate the first of these boundaries, and he believed it would carry.

And now as to some other points which the gentleman from Vermont (Mr. Collamer) had stated with so much clearness and fairness. That gentleman had a perfect acquaintance with the whole subject of the public lands; and, after having thoroughly examined all the resolutions of the Wisconsin convention, he found none to object against but the fifth. Mr. Tweedy presumed there would be no serious objection in the House to any other. That resolution referred to a repeal of the proviso in the act granting alternate sections of land for the construction of a canal to unite the Wisconsin and Fox rivers, which proviso required the sections reserved by the United States to be sold at not less than $2.50 the acre. The gentleman from Vermont had very frankly stated that his chief objection to this was as a precedent. Mr. Tweedy did not

pretend to be competent to decide whether Congress had established the doctrine of the inviolability of precedent or not; he had not himself heard of such a decision. But this he knew, that if there was any case which could claim the repeal of such a proviso, on grounds both of liberality and of justice, this was that case.

On the very same day that Congress had granted these alternate sections of land to Wisconsin for her canal, the same body had granted to Iowa a strip of land in alternate sections, extending five miles on each side of the Des Moines River, four hundred miles in length, for a work lying wholly within the limits of one state, and therefore in no sense national, without any such proviso. The canal for which the grant had been made to Wisconsin connected two rivers, running five hundred miles in opposite directions—rivers a mile in width at their mouths, but approaching in their upper branches so near to each other that in a freshet their waters mingled into one. It was the most wonderful and at the same time one of the most important natural water communications on the North American continent. At the point where they approached, a canal a little over one mile in length, with a slack-water navigation of forty miles, enabled the same vessel to visit both New Orleans in one direction and Montreal in the other, and provided the means of transporting all the lead of that most productive mineral region, to be transported by water carriage to any part of the world. If there was a national work in the world, it was this. Yet, while Congress had granted alternate sections in a strip of three miles on each side the rivers, and ninety miles in length, the same Congress, on the same day, had granted to Iowa alternate sections in a strip four hundred miles in length, and extending five miles from the river. And this for a state work, lying wholly within a single state, and not national in any sense of the word!

Mr. Tweedy went on to say that Congress had never given to Wisconsin a cent; and the land it had given was clogged with a condition from which Iowa was wholly free. If Wisconsin had enjoyed her five per cent ever since her population had been sufficient for her becoming a state, she would have received more than all that Congress paid for her governor, judges, and the whole system of her territorial government, roads, harbors, and all. This was the evenhanded justice which had been meted out to Wisconsin! She might have been a state five years ago, when her road

fund alone would have far exceeded all she had ever received at the hands of this government.

Congress had made a grant of lands to construct a canal from Milwaukee to Rock River, which the state did not want and never asked for. The land was not granted to the state, but to a company of private individuals, who were not able to carry on the work and finally abandoned the project. It was a route for a railroad and for a canal. The state sold the land granted to her, and she had some left yet. In any other case the government might have whistled for its money; but the people of Wisconsin had volunteered to charge themselves with all that money, if Congress would but put them on the same footing with all other settlers on the public land. This was the only instance in which Wisconsin had ever asked anything from the government; yet now it was said that to grant her request would be setting a dangerous precedent and would violate a fundamental principle of our land system. Mr. Tweedy said that after looking at these facts, and after looking at all the reports of her own engineers on the subject, as well as the early reports of the French (for there were reports two hundred years old in favor of this communication), and perceiving that all who had ever investigated the subject were of but one opinion—if, after all this, gentlemen were disposed to maintain that it was not competent for Congress to grant a few hundred acres from the public domain to aid in such a work—and that to a state that had never before asked the government for anything—they might continue to hug their vast domain, and might continue to draw from the state a million of dollars a year, as they had done for years past.

She had kept her hands off their quota of five hundred thousand acres, to which she was entitled with the other new states; yet by every day that the entrance of Wisconsin into the Union was delayed Congress took $200 from her school fund. Whether the land she had received was or was not to be deducted from her five hundred thousand, Mr. Tweedy knew not and cared not. If the government was so mean as to open an account current with the state, it might have whatever the footing would show to be due; and Wisconsin would pay it without looking at the items of the account.

Mr. Tweedy here said that he would move an amendment which had received the sanction of the whole committee on the territories.

Mr. Rockwell of Connecticut rose to say that it seemed to him that the views of the gentleman from Vermont (Mr. Collamer) had

been mistaken by the honorable delegate. Mr. Rockwell thought that in his remarks he had been disposed to show great liberality and such a disposition toward the coming state as ought to shield him from some of the remarks which had fallen from that gentleman. All that the gentleman from Vermont maintained was that if the alternate sections granted to Wisconsin should be reduced to the minimum price, and that reduction should not be charged upon the five hundred thousand acres to which she was entitled, it would form an injurious precedent against doubling the price of reserved sections in all cases hereafter. Mr. Rockwell was willing to give liberally to new states, as he had proved by his course in relation to such lands; but, really, unless this was to be considered as part of Wisconsin's five hundred thousand acres, he could not vote for this provision in the bill.

Mr. Tweedy (resuming) said the principle of this grant was not new. When a canal or railroad ran through a portion of public domain that was wholly unsettled, it was the duty of Congress to grant alternate sections of land in its vicinity, in order to aid in its construction; because the making of the canal aided the sale of the rest of the land; and then it was proper enough to double the price of the sections reserved. But when the road or canal passed through a region partially settled, the reservation of such sections operated as a robbery on the settlers already there, because it compelled them to pay double for the lands they had already improved. The effect was to drive off or keep off every emigrant for ten miles round the proposed course of the canal. They were afraid to make improvements, for fear, when the alternate sections came to be reserved, their houses would fall within the sections reserved by government, and so they would be compelled to pay double as much as their neighbors. In fact, this was the case in Wisconsin at this moment. People were waiting till the reservations were fixed; and the consequence was that that part of the country remained unsettled. Every such restriction operated injuriously to the country where it took effect; and the people would continue to agitate and agitate, at the expense of the contemplated improvement itself, rather than submit to so injurious an arrangement. The plan worked admirably on a great prairie, or in a country wholly unsettled, but not in a country settled to the extent Wisconsin was. To the reserves on the north side of the river these remarks did not so much apply, because there the lands were of inferior quality;

but on the south side there were multitudes ready and desirous to settle, who were now deterred. Ought a work so important, of a character so clearly national, and so easy of completion, to be clogged and retarded by a restriction of this description?

(Mr. Tweedy here gave notice of an amendment which he intended to offer.)

Mr. Tweedy would not detain the committee with further remarks. He would merely add that as he understood the gentleman from Illinois (Mr. Smith) had consented to withdraw his amendment for a southern boundary, he hoped that gentleman would seize an early opportunity of doing so, as the hour allotted to this debate would soon close.

Mr. McClernand would not intrude upon the attention of the committee but for the gratuitous assault made by the member from Connecticut (Mr. Rockwell) upon western members, and particularly the advocates of the graduation policy; which assault was the more wanton because it was indirect and deliberate. Mr. McClernand, however, would first address himself to some of the details of the bill before he would proceed to notice this assault, which reflected more upon the courtesy of the member from Connecticut than upon the advocates of a relaxation of the rigors of the present land system. Mr. McClernand would vote for the bill, in such proper form as would most speedily admit the state of Wisconsin into the Union, of which her worthy and patriotic people were anxious to become a member. He would do this from a regard for the expressed wish of the people of Wisconsin and because he was not unwilling to see the number of sister states composing the great family of this federal Union increased. Wisconsin would make the thirtieth state of the Union.

He was in favor of the St. Croix boundary because that was the boundary fixed by the act of Congress of 1846, and because that boundary had been adopted by the people of Wisconsin in their late constitutional convention. Public attention had been called to that boundary and was prepared, perhaps, to receive it. The faith of Congress was also pledged, in some measure, if not absolutely, in favor of that boundary, in consequence of what had been stated; and for that reason, no other or different boundary ought to be prescribed by Congress. He would therefore vote against what was called the Rum River or extreme western boundary, which had been recommended, alternatively, by the people of Wisconsin; also

against the boundary proposed by his colleague (Mr. Smith), which was not perhaps a natural but an arbitrary boundary.

In regard to the lands heretofore granted to the territory or state of Wisconsin for purposes of internal improvement, and which were recognized and regulated by the constitution of Wisconsin, it was of little or no consequence whether provision was made in the bill for the deduction of the quantity from the grant of five hundred thousand acres, to which the state would be entitled under the act of September 4, 1841, or not; for that act, by a general regulation, expressly required that all such special grants should be deducted from the general grant of five hundred thousand acres to each of the new states.

Upon the subject of graduation, he denied the charge of the member from Connecticut (Mr. Rockwell) that it was a "gross and outrageous" measure; such a denunciation could only proceed from a gross misconception of the merits of the measure. Mr. McClernand was for graduation, for many reasons; among others, because it was consonant in its principles and effects to the spirit and genius of our Constitution of government.

The Constitution certainly contemplated that all the states, the new as well as the old, should stand upon the same footing of constitutional sovereignty and independence. No one would deny this as an abstract proposition. Well, could it be true that the new states held such a footing, when they were subject to an anomalous and degrading jurisdiction unknown to the old states? When this government might claim to invade the new states with a peculiar and arbitrary jurisdiction, to punish by fine and imprisonment any citizen of the new states, as a trespasser, who might tread, or cut a twig, upon the public domain—when this government might in virtue of its pretensions send a military force into the new states to exclude or drive the settlers from the public lands,—could such be a footing of equality in regard to the new states, when such arbitrary pretensions were disavowed in relation to the old states? Certainly not. The Constitution, therefore, demanded that such a policy should be adopted in relation to the public lands as would most speedily release the new states from their vassalage to the federal government, and admit them, in fact, to constitutional equality.

Not only the Constitution demanded this policy, but also considerations of public policy. Agriculture was the great and pri-

mary interest of the country. It was essentially a republican interest. In proportion, therefore, as we developed and improved this interest, so we would augment national and individual wealth, and strengthen the republican props of the government. By reducing the price of public lands, the circle of competition for their purchase would be extended, the lands thus brought within the reach of the poor as well as the rich, monopolies prevented, the number of freeholders increased, and the public revenues improved.

The old states graduated the price of their lands according to their qualities. Maine sold hers for some twenty-five cents per acre, payable, perhaps, in work upon the highroads; Pennsylvania for a still smaller price; so also Kentucky, Georgia, and other states—and the policy thus adopted by states for local benefit should be adopted by this government for the benefit of the whole.

Graduation had been tried and worked well—it was tried in Georgia, also in Tennessee—in regard to the lands of this government. And why should not the benefits of a policy approved by the states be adopted by this government? Lands, like all other property, were of unequal value—some worth more, others less, of course. Therefore policy, justice, common honesty, required that they should be rated and sold according to their different values. And this was the whole extent of graduation.

The public lands have cost the government an average of twenty-three cents per acre, including the whole expense of purchasing, surveying, and selling them. Is it just, is it fair, therefore, that these lands should be held by the government for an indefinite period for sale at $1.25 per acre? This would be avarice, which would be questionable in an individual, much more so in a government professing to be popular and free.

But was it not strange—even affrontive—that the member from Connecticut should object to graduation, when he and his party advocate that wasteful and agrarian measure of "distribution"? And what was distribution? It proposed to tax the people of the new states unequally, as consumers, to buy more and more lands, to be sold chiefly to themselves, at an advanced price, in order that the proceeds of such sales might be distributed among all the states. It proposed to divert the proceeds of the sales of the public lands from the treasury to the states; it proposed, in effect, to squander the land revenue for party purposes. Was not such a policy most obnoxious and dangerous?

The member from Vermont (Mr. Collamer) had undertaken the other day to censure what he considered the faithlessness of granting bounties of land to soldiers for services in past wars, inasmuch as the "sales of the public lands," not the lands, had been pledged for the payment of a public debt. The member should remember that he voted against the repeal of the distribution act, which diverted the land fund from the payment of a large public debt, created by a Whig administration for the payment of which the fund had been pledged. The member from Vermont should have consulted his record before he adventured upon the task of a lecture on public morality.

Mr. Ficklin read the following amendment, which he proposed to introduce, but which, being ruled out of order, he did not offer:

"Insert after the word 'states,' at the end of the preamble, in lieu of the first, second, and third sections:

" 'WHEREAS, by the compact entered into by the government of the United States when the cession of the territory northwest of the Ohio River was made, provision is made that states formed out of said territory "shall be distinct republican states, and admitted members of the federal Union, having the same rights of sovereignty, freedom, and independence as the other states"; and WHEREAS the possession of lands within the new state by the Federal government, other than for the purposes mentioned in the Constitution of the United States, deprives those states of the power of taxing a large part of the property within their limits and also of making donations to actual settlers, and therefore deprives them of some of the rights of sovereignty, freedom, and independence possessed by the other states: therefore,

" '*Be it enacted, etc.*, That all the public lands within the state of Wisconsin be, and the same are hereby, relinquished to the state aforesaid for the following purposes:

" 'First. That the state authorities secure to each actual settler, being the head of a family, who shall occupy the same for a term of years, not less than eighty nor more than one hundred and sixty acres of land, proportioned to the number in family.

" 'Second. That ample provision be made from the proceeds of the public lands to educate, by a system of common schools, each child within the limits of the state aforesaid, who may not otherwise be provided with the means of doing so.' "

Mr. Smith of Illinois read a modification of his amendment, which is inserted in a subsequent column.

Mr. Jones of Tennessee went into a short speech in strenuous opposition to a southern boundary, as calculated to throw back the admission of the new state. She had now a right to come in; she was, according to law, a state of this Union; or, if anything was wanting to make her so, it was only the President's proclamation. The design of the amendment was to fasten on her a system of territorial vassalage, with all the machinery of territorial government, for twenty years to come. Mr. Jones was against it. He thought it wrong in principle for the general government to pay the expenses of a government for a territory; he thought the people of the territory should be allowed to tax themselves for the support of their own government. He was opposed to this amendment; but whenever a bill should be brought in giving to every free white male citizen in the United States a tract of one hundred and sixty acres of land, on condition of five years' inhabitation and cultivation, it would have his cordial support. He believed this would be the very best disposition that could be made of the public domain.

The time allotted to debate having expired, Mr. Smith of Indiana availed himself of the privilege allowed by the rule to the gentleman reporting a bill from a committee and addressed the committee. The gentleman from Illinois (Mr. Smith), he said, had determined to modify his amendment so as to authorize the state of Wisconsin, with the assent of Congress and the territories of the Northwest, to change the boundary. So far as he was concerned, he had no objection to that proposition. If a change was hereafter made with the assent of the United States, the people of Wisconsin, and the territory beyond, all interested would be consulted, and no injury could result. He could not, however, consent to the adoption of the change suggested by the gentleman from Wisconsin. That subject had been under the minute examination of the committee on the territories; and he believed it was the unanimous recommendation of that committee that the line heretofore sanctioned by Congress, and now by the convention of Wisconsin, should be ratified by Congress, and, under all the circumstances, was the best line to be adopted.

Mr. Tweedy was understood to say that the report of the committee on the territories was a majority report—the minority had not submitted a report.

Mr. Smith replied that unless he was mistaken, the committee were united in recommending the St. Croix boundary in preference to that of the Rum River. He could see no reason for the change. The St. Croix was a navigable stream for boats of large tonnage; and he believed a stream of that character presented a better boundary than any imaginary line. It avoided conflicts of jurisdiction; it gave to the bordering states the joint use of the stream—as in the case of the Ohio forming a boundary line for Ohio, Virginia, Indiana, Kentucky, and Illinois, all of which states were equally benefited.

Another reason why they should circumscribe the limits of the state as much as they could was that if they ran the line up to Rum River they left not territory enough to form a new state. West of the St. Croix was territory out of which in a few years would be formed a new state. Instead of still further circumscribing the territory, by running the line thirty or forty miles farther west, if any objection was to be made to the line of the St. Croix it was that with it the limits would be too much extended; and if they were to vary from this line, he would rather go for a more southern line. He had given his sanction only to the line that had already been sanctioned by Congress and by the territory; and by agreeing to that line, they closed the subject without further legislation. If they adopted this line, immediately on the passage of the act Wisconsin became a state of the Union. On last Monday she elected her representatives; and in the course of two weeks two representatives of that state might be here to take their seats on this floor. He was unwilling to adopt any course to prevent their taking their seats, to postpone their coming into the Union a year or eighteen months longer.

A word in regard to this second section. Gentlemen had spoken of it as though this bill proposed to make extensive donations of land to Wisconsin; nothing of this kind was proposed by Wisconsin; and he was surprised when he read their constitution and their convention to find that, instead of making these clamorous demands of which they heard so much as coming from the new states, they did not ask the general government to give them one acre of land. This bill gave them not one acre; it only proposed to change the direction of previous grants heretofore made by the government.

The honorable chairman of the committee on public lands (Mr. Collamer) had said that this resolution called for nothing to which he would object. He (Mr. Smith) was certain that if the gentleman would not object, no other gentleman would; for he was very certain there was no man in this House who looked upon the demands of the new states with a more jealous eye than that gentleman; and if he could find nothing objectionable in the resolution, he presumed no other gentleman would.

A few words with regard to a thing to which the gentleman did object. He was unwilling to recognize the principle that grants of land should be made to the new states for the purpose of any improvements on a different principle from that of the donations to the old states.

Mr. Collamer, interposing, said this was not the case. He did not know what the gentleman meant by the jealousy, suspicion, with which he (Mr. Collamer) looked on the new states; if the gentleman would examine the history of his (Mr. Collamer's) course and votes here, he thought he would find that no such charge could be made against him. He had entertained, and did entertain, favor for the policy of making grants of land on the alternate section principle, raising the prices of the sections to be reserved. This could not be done in the old states, of course, yet he was in favor of the policy; and because he believed that the proposition of this section was inconsistent with such policy, he was opposed to it.

Mr. Smith confessed he was unable to recognize any great degree of liberality in that proposition—in getting the new state to increase the value of one-half of certain sections of the public domain to the value of the whole, and to give to them one-half. The general government gave nothing; it prevailed upon the citizens of the new state to enter one-half at the value of the whole. Such was the liberality of the general government in benefiting the states. He believed the call on the liberality of this government was much stronger than would be asserted by this principle. The public domain was held by the general government in trust, not for the old states or the new states, but for all the states collectively. How should that trust be exercised? Upon the niggardly principle that not one acre should ever be parted with until we could see the cash coming back into the treasury? Was this government not to be benefited by other means than the receipt of revenue into the treasury? There were other and higher reasons that should govern

in the administration of the public lands; the great and paramount interest was the improvement and settlement of the country. He asked the gentleman from Vermont if every acre of land cultivated in the new states was not a benefit to Vermont.

Mr. Collamer: It is not of as much benefit as it would be if they cultivated it in Vermont.

Mr. Smith: From what I have heard of Vermont, I am afraid there would be a poor prospect of our people becoming rich by cultivating land there.

Mr. Collamer (in his seat): We are a poor people.

Mr. Smith: Not a poor people; but your land is poor compared with ours.

There were other reasons, he continued, to sustain the policy of liberal grants of the public lands by the general government to the new states. In the old states they had roads and canals—channels for their produce which yielded a ready return; but in the new states there were farmers who had to wade through swamps in dragging their produce to points where they received but a poor return; who were situated in the interior, remote from market, without channels of communication; and without some assistance from the general government they must remain destitute of improvements of this kind. Then it was a matter of interest, of policy, for the general government to aid them; every improvement was adding to the general wealth of the country and, precisely in the ratio that the states increased in wealth and population, would increase the revenues and resources of the general government. By extending settlements there, they extended the area of consumption for the manufactures of the East—Massachusetts, Connecticut, Vermont. All the manufacturing states now found their most profitable market in the new states. Where could they collect their revenues, their wealth from their manufactured articles, if they did not find them in the markets opened in the new states west of the Allegheny Mountains? The benefits were mutual: by extending the benefits of these improvements to the western country the old states, interested in manufactures, increased their revenue and resources; they had a direct interest in affording these facilities to the western people, in order to enable them to increase their settlement and bring them on something like an equality with the older states.

These improvements which were made by the general government or by the citizens of the new states from the means extended to them by the grants of portions of the public domain were the subject of just and proper appeals to the liberality of the old states for other reasons. Where did our three millions of dollars a year sales of the public lands come from? From the old states? How much did Vermont, how much Massachusetts contribute towards it?

Mr. Collamer said a very large part of the money paid in the new states for the public lands was paid by the people who had migrated there from the old states and settled.

Mr. Smith replied that the gentleman from Vermont was laboring under a very great mistake. More than three-fourths of the entire receipts from the public lands was paid by the bona fide settlers who had been there for years, and not by immigrants into the new states; by the men who had worn out their constitutions and injured their health in tilling these lands for the purchase of homes for their children. Every individual familiar with the people, their institutions, and habits knew those who were immigrants into the new territories constituted but a very small portion of those who purchased the lands. And another fact was that a very large proportion of those who went there took with them no money to buy lands, but were men dependent on their own industry, their toil after they got there, to raise the money to buy the lands. It was not every man who went out there with a wagonload of money. (A voice: Many with a wagonload of children.) Yes, with a wagonload of children, it was true, and they had to toil there to raise the means to support them and buy land for them. And where was the money expended? In the West? For lighthouses, buoys, etc., there? No; the money drawn from the people of the new states upon the sales of the public lands was brought here and expended on the Atlantic seaboard; and the people of the old states received the benefit of it—of three-fourths of it. They had no navies in the West to absorb the public revenue, no lighthouses, no buoys, beacons, breakwaters—only a few neglected, abandoned harbors on the lake shore; and they were unable to wring from the coffers of the government anything to improve them. The fact was notorious that three-fourths of the money drawn from the western country on the sales of the public lands was expended in the old states in these improvements, in which the new states had no in-

terest but an indirect and general one. Did this afford no reason why the old states should exercise some liberality toward the new states? He thought it did—a very strong one; and he wondered that any objection should be made to the extremely reasonable request of Wisconsin. She did not ask one acre of land—that the general government should give her one foot of soil—but that this land which had been reserved should be sold at the same price as other lands. The gentleman from Vermont had objected that it would be setting a bad precedent. A bad precedent? Had the gentleman from Vermont found no such precedents before? He could refer the gentleman to several which had taken place since he (Mr. Collamer) had had a seat on this floor, for he believed the gentleman and himself first took their seats in this hall at the same time. A grant had been made to Indiana to aid in the construction of the Wabash and Erie canal. Did the general government increase the price of the reserved lands in that case?

Mr. Collamer explained that there had been instances he knew in which lands had been granted to the states—as, to Iowa for the improvement of the Des Moines River, and there had been some others; but, generally speaking, these grants had been made by elevating the reserved sections. In Indiana this was the case with some, and with others it was not. Now, after having elevated them and having made the grant, it was asked that the prices should be reduced. His objection was that it would be establishing a precedent which would injure the new states; that they would not get their lands any more. He wanted them to get them.

Mr. Smith replied that, so far as he knew anything of the feelings or wishes of the new states, he was sure they were not anxious to obtain grants on those terms—(Mr. Collamer [in his seat]: They ask many more.) Mr. Smith (continuing the sentence)—and if they could not obtain them on other terms, they did not want them. He was advised that if Congress continued to hold up these reserved lands at $2.50, Wisconsin would abandon her public works; she would be driven to it by the force of public opinion there.

But he argued that even if the weight of the precedents was the other way, they should not be followed if they were bad in themselves. It was not right in Congress to hold these reserved lands in Wisconsin at $2.50 per acre. In 1846 Congress passed a bill by which they gave to Iowa half of the land within five miles of the Des Moines River for the purpose of improving that river; and the re-

served lands were allowed to be sold at $1.25 per acre. On the same day they passed a bill granting to Wisconsin half of the land within three miles of the Fox and Wisconsin rivers, which were not half as long. Iowa, then, by this bill got four times as much as Wisconsin for the purpose of making a work by no means as valuable as that in Wisconsin, either to the country locally interested or to the general interests of the Union. He asked, then, why should Congress demand that Wisconsin should have these lands withheld from settlement until they would bring $2.50, while they sold those in Iowa at $1.25. How could this invidious distinction be made in favor of one state and against another?

Mr. Duer was understood to inquire whether in case the price of $2.50 an acre retarded the settlement of the government lands, it would not be advantageous to the state by enabling her to sell her share.

Mr. Tweedy was understood to say you could not get settlers to go on these lands; they would give up their lands before they would submit to pay such a price; they could not be made to believe that they had not the inalienable right to them.

Mr. Smith would give the general answer to the gentleman from New York, that no state could ever be benefited by a policy which drove settlers out of it; and this price placed upon the lands in Wisconsin would inevitably have that effect. The lands were not worth it, and the government could never receive the price they demanded until necessity extorted it from the settler. The lands were no better than those in Iowa. Would not the general government derive some benefit from the improvements besides this miserable increase on the price of the lands? Was not the opening of a water communication from Green Bay to the Mississippi, by which a direct water course was opened between New Orleans and the lakes, of benefit to all the states of the Union? And would not the vast commerce which would be carried through that channel add to the revenues of the government? He thought it was consideration enough. In the case of the Wabash and Erie canal, Congress with liberality granted the alternate sections to Indiana and sold the balance not at $2.50, but they were selling now at $1.25; and the benefit was that those lands which before found no purchasers were sought for with avidity; that thousands of dollars had come into the treasury for lands which until this had remained unsold, and which would otherwise have remained so for years.

But, again, before that time lands had remained unsold for forty years. The government did not exact terms of this kind from Illinois when the Michigan and Illinois canal was projected, the completion of which has recently taken place, connecting the lake with the river and affording important facilities to the commerce of the West. The government, with becoming liberality, granted land to aid in the construction of that work and it did not say that the rest should not be sold for less than $2.50. The government was willing to trust to the work itself for a return for its liberality in the promotion of the interests of the people of this country. Why, then, should they insist upon these terms with Wisconsin? Was she entitled to less consideration than her older sister states? Was she to be treated with a stepmother's kindness? Was she to come into this Union on terms more onerous than were exacted from Iowa? He believed there was too much magnanimity, too much liberality in the representatives of this Union to require Wisconsin to submit to conditions of this kind. All the provisions of this bill regarding this matter were liberal. They exhibited no exacting spirit; and Wisconsin asked no favor that had not before been extended to others. She asked that the public domain within her limits should be offered at the same price as was fixed on lands in other states. He would not detain the committee longer.

Mr. Smith of Illinois then modified his amendment to the amendment of Mr. Smith of Indiana (both of which are published above) by substituting the following:

"*Provided,* That the people or legislature of the state of Wisconsin (in the manner provided in the constitution for amending the same) and the new territory to be created out of the remaining territory of Wisconsin, and any other that may be included in the same, shall have the power, by mutual agreement, at any time within ten years, to change or fix the boundary between them, so as to include within the new territory the valley of the St. Croix River or such line south of the St. Croix River as they may agree upon."

He availed himself of the few minutes allowed by the rules to explain the purport of his amendment. He had submitted an amendment to fix a line; and there were other projects prescribing dividing lines. But he had become sensible that they could not pass, and therefore he had modified his amendment, to be added to the amendment of the chairman of the committee on the territories

(Mr. Smith of Indiana), so as to put it in the power of the state of Wisconsin and the new territory to be hereafter created, to agree on a more equitable dividing line between them. He believed his proposition was just, and he warned gentlemen not to prescribe a line which would not be consonant with the wishes of the people of the territory. It would be better to bring in the whole territory as it now is.

The amendment which he now submitted met the approbation of the delegate from Wisconsin and also the views of the chairman of the committee on the territories. With their approval he presented it; and he hoped this committee would not refuse to the people left north of the line of the St. Croix the poor privilege, at some future time, to fix a line more just and more in conformity with the true policy of Congress. He held it to be unjust to make a dividing line here which would compel persons in the new state to travel four hundred or five hundred miles to the capital. Congress should not compel people to be embraced in the state of Wisconsin who had no interests or feelings in common with many of its inhabitants. He presumed there would be no material objection to his amendment, as modified.

The amendment was rejected.

Mr. Tweedy then moved to amend the amendment by striking out all after the word "with," and inserting the following:

"The change of boundary proposed in the second article of said constitution, to wit: leaving the boundary line prescribed in the act of Congress entitled 'An Act to enable the people of Wisconsin Territory to form a constitution and state government, and for the admission of such state into the Union,' at the foot of the rapids of St. Louis River; thence, in a direct line bearing southwesterly, to the mouth of Iskodewaba or Rum River, where the same empties into the Mississippi River; thence down the main channel of the said Mississippi River, as prescribed in the said act."

Mr. Tweedy would simply state that this amendment was offered as a substitute for that offered by the chairman of the committee on territories, and its object was to fix the Rum River line as the boundary instead of the St. Croix. It had been recommended by the convention of Wisconsin, after mature discussion; and, therefore, he was bound to advocate it. The reason why they preferred this line was not because they desired the additional territory, but because they believed it would be more convenient and more judicious

to bring those living in the St. Croix valley all within the state. Another reason was because of certain advantages to be derived from steamboat navigation, which he explained in detail.

The amendment to the amendment was rejected, and the amendment of the gentleman from Indiana (Mr. Smith) was then agreed to.

The second section was next read, as follows:

"Section 2. *And be it further enacted,* That the assent of Congress is hereby given to the first, second, fourth, and fifth resolutions adopted by said convention and appended to said constitution, and the acts of Congress referred to in the said resolutions are hereby amended so that the lands granted by the provisions of the several acts referred to in the said first and fourth resolutions, and the proceeds of said lands, and the five per centum of the net proceeds of the public lands therein mentioned shall be held and disposed of by said state in the manner and for the purposes recommended by said convention; and so that, also, the lands reserved to the United States by the provisions of the act entitled 'An Act to grant a quantity of land to aid in the improvement of the Fox and Wisconsin rivers, and to connect the same by a canal in the territory of Wisconsin'; and also, the even-numbered sections reserved by the provisions of the act entitled 'An Act to grant a quantity of land to the territory of Wisconsin for the purpose of aiding in opening a canal to connect the waters of Lake Michigan with those of Rock River,' shall be offered for sale at the same minimum price and subject to the same rights of preëmption as other public lands of the United States: *Provided,* however, That no person shall be entitled to a preëmption by reason of the settlement and cultivation of any quarter section or other subdivision of said even-numbered sections, which tract, before the commencement of such settlement, shall have been claimed by any other person, cultivating and improving the same in good faith, and which shall have continued to be claimed, cultivated, and improved in like good faith by such person, his representatives or assigns, until the sale of said tract, and of which said prior claim, cultivation, and improvement the person so claiming preëmption shall have had notice at the time of his entry and settlement. Notwithstanding, such other person, his representatives or assigns, for want of personal residence or from other cause, may not be entitled to a preëmption to such a tract, under the existing laws of the United States; and *Provided,*

further, That the liabilities incurred by the territorial government of Wisconsin under the act entitled 'An Act to grant a quantity of land to the territory of Wisconsin for the purpose of aiding in opening a canal to connect the waters of Lake Michigan with those of Rock River,' hereinbefore referred to, shall be paid and discharged by the state of Wisconsin."

Mr. Collamer moved to amend this section to make it conform to the views he expressed before the debate was closed, by striking out the words "and fifth," so that it would read, "the first, second, and fourth resolutions adopted by said convention," etc. Also, strike out the words: "and so that, also, the lands reserved to the United States by the provisions of the act entitled 'An Act to grant a quantity of land to aid in the improvement of the Fox and Wisconsin rivers, and to connect the same by a canal in the territory of Wisconsin.' "

After a few words of explanation between Mr. Collamer, Mr. Tweedy, and Mr. Jacob Thompson, the amendment was agreed to.

Mr. Tweedy moved to amend the same section by striking out the words: "Notwithstanding, such other person, his representatives or assigns, for want of personal residence or from any other cause, may not be entitled to a preëmption to such tract, under the existing laws of the United States; and *Provided*, further, That the liabilities incurred by the territorial government of Wisconsin under the act entitled 'An Act to grant a quantity of land to the territory of Wisconsin for the purpose of aiding in opening a canal to connect the waters of Lake Michigan with those of Rock River, hereinbefore referred to, shall be paid and discharged by the state of Wisconsin,' " and inserting: "Neither shall any preëmption be allowed to any tract to the injury of any person, or of the representatives or assigns of any person claiming and occupying the same or any part thereof, in good faith, in his or her right, at the passage of this act, and owning valuable cultivation or improvements thereon, which cultivation or improvements shall have been assigned by the person so claiming preëmption, or if commenced subsequently to the entry and settlement of such person, shall have been made with his consent or acquiescence." Agreed to.

Mr. Rockwell of Connecticut moved to amend by adding at the end of the section the following: "And, in addition to the land hereby appropriated for the purposes of education, sections num-

bered thirty-six in each township of the public lands of the United States in said state be and the same are hereby appropriated in support of common schools, to be disposed of by the legislature of said state of Wisconsin, in accordance with the provisions of said constitution; and the President of the United States is hereby directed immediately to withdraw from sale the said sections numbered thirty-six, in order that they may be appropriated as aforesaid: *Provided,* That all lands sold or reserved under any act of Congress, or in relation to which any preëmption rights, inchoate or perfect, shall have been acquired prior to the time when the same shall be withdrawn from market, shall be excepted from this grant."

Mr. Rockwell briefly explained the purport of his amendment. Its object was to promote common school education; and he offered it the more heartily because there were schemes here in regard to the public lands which he thought would be injurious. He would be glad if the House would go even beyond this proposition and make provision for the blind, the deaf and dumb, and the insane.

Mr. Vinton (having moved an amendment to give him the opportunity) said no gentleman here would be more willing than he was to appropriate large amounts of land for the promotion of education; but the plan of the gentleman from Connecticut would not be satisfactory, inasmuch as it was unequal. Why, he asked, make this provision for Wisconsin and deny the same to Illinois, Indiana, Ohio, and other states? It was a grave question and should not be acted upon here without having passed through an examination by a committee.

Some further conversation ensued in which Messrs. Rockwell, Vinton, and Johnson of Arkansas took part.

Mr. Thompson of Mississippi then objected to the amendment as irrelevant and therefore out of order.

The Chair sustained the objection.

Mr. Rockwell appealed from the decision of the Chair, but it was sustained by the House.

Mr. McClernand moved to strike out the second section. Lost.

The third section was then read, as follows:

"Section 3. *And be it further enacted,* That the purchaser of any tract of the said even-numbered sections mentioned in the preceding section, and sold since the reservation thereof at the minimum price of $2.50 per acre, shall be entitled to receive from the commissioner of the General Land Office a certificate of the quantity

of land so purchased and of the amount of the excess paid therefor over and above the value of said land, at the rate of $1.25 per acre, which certificate to the amount of such excess shall be receivable from the holder thereof or his assigns in like manner as so much money in payment of the public lands of the United States. That in the event of the death of any such purchaser before the issuing of such certificate, the same shall be issued in favor of the lawful representatives of such purchaser."

Mr. Thompson of Mississippi moved to strike it out. Lost.

The remaining sections were read and passed without amendment; and on the motion of Mr. Smith of Indiana the committee rose and reported the bill and the amendments to the House.

Mr. Smith moved the previous question, and it was seconded, and the main question ordered to be now put.

The first amendment of the committee of the whole, fixing the St. Croix as the boundary of the state, was concurred in.

The question was then stated to be on concurring with the second amendment of the committee of the whole, viz., the amendment to the second section submitted by Mr. Collamer, on which the yeas and nays were called for, and ordered.

Mr. Stanton moved an adjournment.

THE CONGRESSIONAL GLOBE

HOUSE OF REPRESENTATIVES

Thursday, May 11, 1848

The journal of yesterday was read and approved.

The Speaker stated that the first business in order was the bill for the admission of the state of Wisconsin into the Union, which was yesterday reported to the House by the committee of the whole on the state of the Union, with sundry amendments, on which the previous question had been moved and seconded, and the first amendment of the committee of the whole (Mr. Smith's, of Indiana) had been agreed to.

The question pending when the House adjourned was on agreeing to the second amendment of the committee (Mr. Collamer's) to the second section (which amendment related to grants of land for certain works of internal improvement).

Mr. Goggin asked the general consent of the House to enable him to move that the business first in order be suspended for a short time for the purpose of calling the committees for reports. It was objected to.

The question was again stated on agreeing to the second amendment of the committee to the Wisconsin bill; it was decided in the negative: yeas 46, nays 94.

The third amendment of the committee (Mr. Tweedy's) was read and agreed to without a division.

The bill was then ordered to be engrossed and read a third time.

Mr. Cobb of Georgia moved the previous question, which was seconded; and, under its operation, the bill was read a third time and passed.

This bill, as it passed, is in the following words: *"A Bill for the admission of the state of Wisconsin into the Union.*

"WHEREAS the people of the territory of Wisconsin did on the first day of February, eighteen hundred and forty-eight, by a convention of delegates called and assembled for that purpose, form for themselves a constitution and state government, which said constitution is republican, and said convention having asked the admission of said territory into the Union as a state, upon an equal footing with the original states:

"*Be it enacted, etc.,* That the state of Wisconsin be and is hereby admitted to be one of the United States of America and is hereby admitted into the Union on an equal footing with the original states in all respects whatever, with the boundaries prescribed by the act of Congress approved August 6, 1846, entitled 'An Act to enable the people of Wisconsin Territory to form a constitution and state government and for the admission of such state into the Union.'

"Section 2. *And be it further enacted,* That the assent of Congress is hereby given to the first, second, fourth, and fifth resolutions adopted by said convention and appended to said constitution; and the acts of Congress referred to in the said resolutions are hereby amended so that the lands granted by the provisions of the several acts referred to in the said first and fourth resolutions, and the proceeds of said lands, and the five per centum of the net proceeds of the public lands therein mentioned shall be held and disposed of by said state in the manner and for the purposes recommended by said convention; and so that, also, the lands reserved to the United States by the provisions of the act entitled 'An Act to grant a quantity of land to aid in the improvement of the Fox and Wisconsin rivers, and to connect the same by a canal in the territory of Wisconsin,' and also the even-numbered sections reserved by the provisions of the act entitled 'An Act to grant a quantity of land to the territory of Wisconsin for the purpose of aiding in opening a canal to connect the waters of Lake Michigan with those of Rock River,' shall be offered for sale at the same minimum price and subject to the same rights of preëmption as other public lands of the United States: *Provided,* however, That no person shall be entitled to a preëmption by reason of the settlement and cultivation of any quarter section or other subdivision of said even-numbered sections, which tract, before the commencement of such settlement, shall have been claimed by any other person cultivating and improving the same in good faith, and which shall have continued to be claimed, cultivated, and improved in like good faith by such person, his representatives or assigns, until the sale of said tract, and of which said prior claim, cultivation, and improvement, the person so claiming preëmption shall have had notice at the time of his entry and settlement. Neither shall any preëmption be allowed to any tract to the injury of any person, or of the representatives or assigns of any person claiming and occupying the same, or any part thereof, in good faith, in his or her

right at the passage of this act, and owning valuable cultivation or improvements thereon, which cultivation or improvements shall have been assigned by the person so claiming preëmption, or, if commenced subsequently to the entry and settlement of such person, shall have been made with his consent or acquiescence.

"Section 3. *And be it further enacted,* That the purchaser of any tract of the said even-numbered sections mentioned in the preceding section and sold since the reservation thereof, at the minimum price of $2.50 per acre, shall be entitled to receive from the commissioner of the General Land Office a certificate of the quantity of land so purchased and of the amount of the excess paid therefor over and above the value of said land, at the rate of $1.25 per acre; which certificate, to the amount of such excess, shall be receivable from the holder thereof, or his assigns, in like manner as so much money in payment of the public lands of the United States. That in the event of the death of any such purchaser before the issuing of such certificate the same shall be issued in favor of the lawful representatives of such purchaser.

"Section 4. *And be it further enacted,* That the judge of the district court for the district of Wisconsin shall hold a term of said court in each year at the seat of government, to commence on the first Monday of July, and another term of said court in each year at Milwaukee, to commence on the first Monday of January. He shall also have power to hold special terms for the trial of causes and for the determination of all suits or proceedings in said courts, at either of the aforesaid places, at his discretion, as the nature and the amount of the business may require. The said court shall be open at all times for the purpose of hearing and deciding cases of admiralty and maritime jurisdiction, so far as the same can be done without a jury. The records and papers of said court may be kept at either of the places herein designated for the holding of said court, as the judge in his discretion shall direct.

"Section 5. *And be it further enacted,* That the clerks of the district courts of the territory of Wisconsin shall before their term of office expires certify under seal and transmit to the clerk of said court all records of all unsatisfied judgments and of suits pending in said courts respectively, attaching thereto all papers connected therewith, in all cases arising under the laws or Constitution of the United States, or to which the United States shall be a party; and they shall forward the same to the clerk of said district court of the

state of Wisconsin, who shall enter the same in his docket; and the said district court shall proceed therein to final judgment and execution, as if such units or proceedings had originally been brought in said court.

"Section 6. *And be it further enacted,* That the clerk of the supreme court of the territory of Wisconsin shall deliver over to the clerk of said district court all records and papers in the office of the clerk or of the said supreme court relating to proceedings in bankruptcy under the late bankrupt law of the United States. He shall also certify under seal and deliver to said clerk all records of judgments and of proceedings in suits pending and all papers connected therewith, in cases arising under the Constitution and laws of the United States.

"Section 7. *And be it further enacted,* That from and after the fourth day of March, eighteen hundred and forty-nine, and until another census and apportionment shall be made, the state of Wisconsin shall be entitled to three Representatives in the Congress of the United States."

Mr. Lincoln moved to reconsider the vote by which the bill was passed. He stated to the House that he had made this motion for the purpose of obtaining an opportunity to say a few words in relation to a point raised in the course of the debate on this bill, which he would now proceed to make, if in order. The point in the case to which he referred arose on the amendment that was submitted by the gentleman from Vermont (Mr. Collamer) in committee of the whole on the state of the Union, and which was afterwards renewed in the House, in relation to the question whether the reserved sections which, by some bills heretofore passed, by which an appropriation of land had been made to Wisconsin, had been enhanced in value, should be reduced to the minimum price of the public lands. The question of the reduction in value of those sections was to him, at this time, a matter very nearly of indifference. He was inclined to desire that Wisconsin should be obliged by having it reduced. But the gentleman from Indiana (Mr. C. B. Smith), the chairman of the committee on the territories, yesterday associated that question with the general question, which is now to some extent agitated in Congress, of making appropriations of alternate sections of land to aid the states in making internal improvements, and enhancing the price of the sections reserved; and the gentleman from Indiana took ground against that policy. He

did not make any special argument in favor of Wisconsin; but he took ground generally against the policy of giving alternate sections of land, and enhancing the price of the reserved sections. Now he (Mr. Lincoln) did not at this time take the floor for the purpose of attempting to make an argument on the general subject. He rose simply to protest against the doctrine which the gentleman from Indiana had avowed in the course of what he (Mr. Lincoln) could not but consider an unsound argument.

It might, however, be true, for anything he knew, that the gentleman from Indiana might convince him that his argument was sound; but he (Mr. Lincoln) feared that gentleman would not be able to convince a majority in Congress that it was sound. It was true the question appeared in a different aspect to persons in consequence of a difference in the point from which they looked at it. It did not look to persons residing east of the mountains as it did to those who lived among the public lands. But for his part he would state that if Congress would make a donation of alternate sections of public land for the purpose of internal improvements in his state and forbid the reserved sections being sold at $1.25, he would be glad to see the appropriation made, though he would prefer it if the reserved sections were not enhanced in price. He repeated, he would be glad to have such appropriations made, even though the reserved sections should be enhanced in price. He did not wish to be understood as concurring in any intimation that they would refuse to receive such an appropriation of alternate sections of land because a condition enhancing the price of the reserved sections should be attached thereto. He believed his position would now be understood; if not, he feared he would not be able to make himself understood.

But before he took his seat he would remark that the Senate during the present session had passed a bill making appropriations of land on that principle for the benefit of the state in which he resided—the state of Illinois. The alternate sections were to be given for the purpose of constructing roads, and the reserved sections were to be enhanced in value in consequence. When that bill came here for the action of this House—it had been received and was now before the committee on public lands—he desired much to see it passed as it was, if it could be put in no more favorable form for the state of Illinois. When it should be before this House, if any member from a section of the Union in which these lands did

not lie, whose interest might be less than that which he felt, should propose a reduction of the price of the reserved sections to $1.25, he would be much obliged; but he did not think it would be well for those who came from the section of the Union in which the lands lay to do so. He wished it, then, to be understood that he did not join in the warfare against the principle which had engaged the minds of some members of Congress who were favorable to improvements in the western country.

There was a good deal of force, he admitted, in what fell from the chairman of the committee on territories. It might be that there was no precise justice in raising the price of the reserved sections to $2.50 per acre. It might be proper that the price should be enhanced to some extent, though not to double the usual price; but he would be glad to have such an appropriation with the reserved sections at $2.50; he would be better pleased to have the price of those sections at something less; and he would be still better pleased to have them without any enhancement at all.

There was one portion of the argument of the gentleman from Indiana, the chairman of the committee on territories (Mr. Smith), which he wished to take occasion to say that he did not view as unsound. He alluded to the statement that the general government was interested in these internal improvements being made, inasmuch as they increased the value of the lands that were unsold, and they enabled the government to sell lands which could not be sold without them. Thus, then, the government gained by internal improvements as well as by the general good which the people derived from them; and it might be, therefore, that the lands should not be sold for more than $1.50 instead of the price being doubled. He, however, merely mentioned this in passing, for he only rose to state, as the principle of giving these lands for the purposes which he had mentioned had been laid hold of and considered favorably and as there were some gentlemen who had constitutional scruples about giving money for these purposes, who would not hesitate to give land, that he was not willing to have it understood that he was one of those who made war against that principle. This was all he desired to say, and having accomplished the object with which he rose, he withdrew his motion to reconsider.

AN ACT FOR THE ADMISSION OF THE STATE OF WISCONSIN INTO THE UNION[1]

WHEREAS the people of the territory of Wisconsin did on the first day of February, eighteen hundred and forty-eight, by a convention of delegates called and assembled for that purpose, form for themselves a constitution and state government, which said constitution is republican, and said convention having asked the admission of said territory into the Union as a state on an equal footing with the original states:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of Wisconsin be, and is hereby, admitted to be one of the United States of America, and is hereby admitted into the Union on an equal footing with the original states in all respects whatever, with the boundaries prescribed by the act of Congress, approved August sixth, eighteen hundred and forty-six, entitled, "An Act to enable the people of Wisconsin Territory to form a constitution and state government, and for the admission of such state into the Union."

Section 2. *And be it further enacted,* That the assent of Congress is hereby given to the first, second, fourth, and fifth resolutions adopted by said convention and appended to said constitution; and the acts of Congress referred to in the said resolutions are hereby amended so that the lands granted by the provisions of the several acts referred to in the said first and fourth resolutions, and the proceeds of said lands, and the five per centum of the net proceeds of the public lands therein mentioned shall be held and disposed of by said state in the manner and for the purposes recommended by said convention, and so that, also, the lands reserved to the United States by the provisions of the act entitled, "An Act to grant a quantity of land to aid in the improvement of the Fox and Wisconsin rivers, and to connect the same by a canal in the Territory of Wisconsin," and, also, the even-numbered sections reserved by the provisions of the act entitled, "An Act to grant a quantity of land to the territory of Wisconsin for the purpose of aiding in opening a canal to connect the waters of Lake Michigan with those of Rock River," shall be offered for sale at the same minimum price

[1] From *United States Statutes at Large,* vol. IX. 30th Cong. Sess. 1. Chap. L. 1848

and subject to the same rights of preëmption as other public lands of the United States: *Provided,* however, That no person shall be entitled to a preëmption by reason of the settlement and cultivation of any quarter section or other subdivision of said even-numbered sections, which tract, before the commencement of such settlement, shall have been claimed by any other person cultivating and improving the same in good faith, and which shall have continued to be claimed, cultivated, and improved in like good faith by such person, his representatives or assigns, until the sale of said tract, and of which said prior claim, cultivation, and improvement, the person claiming preëmption shall have had notice at the time of his entry and settlement; neither shall any preëmption be allowed to any tract, to the injury of any person, or of the representatives or assigns of any person claiming and occupying the same or any part thereof in good faith, in his or her right, at the passage of this act, and owning valuable cultivation or improvements thereon, which cultivation or improvement shall have been assigned by the person so claiming preëmption, or, if commenced subsequently to the entry and settlement of such person, shall have been made with his consent or acquiescence; and *Provided,* further, That the liabilities incurred by the territorial government of Wisconsin, under the act entitled "An Act to grant a quantity of land to the territory of Wisconsin for the purpose of aiding in opening a canal to connect the waters of Lake Michigan with those of Rock River," hereinbefore referred to, shall be paid and discharged by the state of Wisconsin.

Section 3. *And be it further enacted,* That the purchasers of any tract of the said even-numbered sections mentioned in the preceding section, and sold since the reservation thereof at the minimum price of $2.50 per acre, shall be entitled to receive from the commissioner of the General Land Office a certificate of the quantity of land so purchased, and of the amount of the excess paid therefor over and above the value of said land, at the rate of $1.25 per acre; which certificate, to the amount of such excess, shall be receivable from the holder thereof, or his assigns, in like manner as so much money in payment of the public lands of the United States. That, in the event of the death of any such purchaser before the issuing of such certificate, the same shall be issued in favor of the lawful representatives of such purchaser.

Section 4. *And be it further enacted,* That the judge of the district court for the district of Wisconsin shall hold a term of said court in each year at the seat of government, to commence on the first Monday of July, and another term of said court in each year at Milwaukee, to commence on the first Monday of January. He shall also have power to hold special terms for the trial of causes and for the determination of all suits or proceedings in said courts, at either of the aforesaid places, at his discretion, as the nature and amount of the business may require. The said court shall be open at all times for the purpose of hearing and deciding cases of admiralty and maritime jurisdiction, so far as the same can be done without a jury. The records and papers of said court may be kept at either of the places herein designated for the holding of said court, as the judge in his discretion shall direct.

Section 5. *And be it further enacted,* That the clerks of the district courts of the territory of Wisconsin shall before their term of office expires certify, under seal, and transmit to the clerk of said courts all records of all unsatisfied judgments and of suits pending in said courts, respectively, attaching thereto all papers connected therewith, in all cases arising under the laws or Constitution of the United States, or to which the United States shall be a party; and they shall forward the same to the clerk of said district court of the state of Wisconsin, who shall enter the same in his docket; and the said district court shall proceed therein to final judgment and execution, as if such suits or proceedings had originally been brought in said court.

Section 6. *And be it further enacted,* That the clerk of the supreme court of the territory of Wisconsin shall deliver over to the clerks of said district court all records and papers in the office of the clerk of the said supreme court relating to proceedings in bankruptcy under the late bankrupt law of the United States. He shall also certify, under seal, and deliver to said clerk all records of judgments and of proceedings in suits pending, and all papers connected therewith, in cases arising under the Constitution and laws of the United States.

Section 7. *And be it further enacted,* That from and after the fourth day of March, eighteen hundred and forty-nine, and until another census and apportionment shall be made, the state of Wisconsin shall be entitled to three representatives in the Congress of the United States.

APPROVED, MAY 29, 1848

IV JOURNAL AND DEBATES

JOURNAL AND DEBATES

WEDNESDAY, DECEMBER 15, 1847

Pursuant to an act of the Legislative Assembly of the territory of Wisconsin entitled "An Act in relation to the formation of a state government in Wisconsin," approved October 27, 1847, a majority of the delegates elected to the convention to form a state constitution under the provisions of said act assembled at the capitol at Madison on the fifteenth day of December, 1847 at twelve o'clock M., when Stoddard Judd, member-elect from the county of Dodge, called the convention to order.

Mr. Lovell moved that the Hon. Charles Dunn be appointed president pro tem, which was agreed to.

On motion of Mr. Kinne, Thomas McHugh was appointed secretary pro tem.

On motion of Mr. Secor, William W. Treadway was appointed assistant secretary pro tem.

On motion of Mr. Rountree, Frederick Hollman was appointed sergeant at arms pro tem.

On motion of Mr. Beall, Douglass Randall was appointed doorkeeper pro tem.

On motion of Mr. Prentiss, William M. Mott was appointed fireman pro tem.

On motion of Mr. Kilbourn, E. D. Brown was appointed messenger pro tem.

Mr. Prentiss introduced the following resolution, which was adopted, to wit: "*Resolved*, That a committee of three be appointed to examine the credentials of members and report thereon at the next meeting of the convention."

The President announced the appointment of the following committee under said resolution, to wit: Messrs. Prentiss, Judd, and Kilbourn.

Mr. Lovell moved that the several members-elect present their credentials to the secretary, which was agreed to.

Mr. Whiton introduced the following resolution, which was adopted, to wit: "*Resolved*, That the rules of the last convention be adopted for the government of this convention until others shall be adopted."

On motion of Mr. Kilbourn the convention adjourned until ten o'clock tomorrow morning.

THURSDAY, DECEMBER 16, 1847

The journal of yesterday was read.

Mr. Prentiss, from the committee to whom it had been referred to examine the credentials of [the members]-elect to this convention, made the following report, which was adopted, to wit:

"The committee to whom was referred the subject of examining and reporting upon the credentials of the delegates-[elect] to this convention would respectfully report that it appears by the certificates of election presented to the committee that the following named persons are entitled to seats as members of this convention, to wit:

Brown—Morgan L. Martin.

Calumet—George W. Featherstonhaugh.

Crawford and Chippewa—D. G. Fenton.

Columbia—James T. Lewis.

Dane—Charles M. Nichols, William A. Wheeler, and William H. Fox.

Dodge—Stoddard Judd and Samuel W. Lyman.

Fond du Lac—Samuel W. Beall and Warren Chase.

Grant—George W. Lakin, John H. Rountree, Alexander D. Ramsey, and William Richardson.

Green—James Biggs.

Lowa—Stephen P. Hollenbeck, Charles Bishop, and Joseph Ward.

Jefferson—Theodore Prentiss, Milo Jones, Abram Vanderpoel, and Jonas Folts.

Lafayette—Charles Dunn, Allen Warden, and John O'Connor.

Marquette and Winnebago—Harrison Reed.

Milwaukee—Byron Kilbourn, Rufus King, Charles H. Larkin, Garrett M. Fitzgerald, Moritz Schœffler, John L. Doran, and Albert Fowler.

Racine—Theodore Secor, S. R. McClellan, H. T. Sanders, S. A. Davenport, F. S. Lovell, A. B. Jackson, A. G. Cole, and J. D. Reymert.

Rock—A. M. Carter, E. A. Foot, E. V. Whiton, Paul Crandall, Joseph Colley, and L. P. Harvey.

Sheboygan and Manitowoc—Silas Stedman.

Walworth—James Harrington, Augustus C. Kinne, George Gale, Experience Estabrook, and Hollis Latham.

Washington—Patrick Pentony, James Fagan, and Harvey G. Turner.

Waukesha—Peter D. Gifford, George Scagel, Squire S. Case, A. L. Castleman, Emulous P. Cotton, and Eleazer Root.

"Your committee further report that as appears from the certificate of the clerk of the board of supervisors of the county of Walworth, Timothy Mower, Jr. is returned as a delegate-elect to this convention. That from said certificate it also appears that there were returned to the office of said clerk 933 votes for Timothy Mower, 902 votes for Ezra A. Mulford, and 50 votes for 'Cyrus' A. Mulford; but that an error was made by one of the clerks of elec-

tion of said county in his return to the clerk of the board of supervisors of said county, by which the name of 'Cyrus' A. Mulford was erroneously written for 'Ezra A. Mulford. Your committee therefore report that in their opinion Ezra A. Mulford is entitled to a seat as a member of this convention from the county of Walworth.

THEODORE PRENTISS, Chairman
BYRON KILBOURN
STODDARD JUDD"

On motion of Mr. Judd, Charles H. Larrabee, a member-elect from the county of Dodge, was admitted to a seat as a member of the convention.

On motion of Mr. Rountree, Orsamus W. Cole, a member-elect from the county of Grant, was admitted to his seat.

Mr. Kilbourn presented the certificate of election of William McDowell as a member of the convention [from the county of Green], who was admitted to his seat.

Mr. Lovell moved that the convention proceed to ballot for president, which was agreed to.

The Chair appointed Messrs. Fenton and Larrabee tellers to receive and canvass the votes; and pending the ballot, Mr. Richardson introduced the following resolution, to wit: "*Resolved*, That a majority of the whole number of members present shall be necessary to the choice of officers of this convention." And the rules having been first suspended for that purpose, the said resolution was adopted.

Mr. Sanders introduced the following resolution, to wit: "*Resolved*, That the convention elect as officers to govern their proceedings one president, one secretary, one assistant secretary, one sergeant at arms, one doorkeeper, two messengers, and one fireman."

Mr. Whiton moved to amend the same by striking out the words "two messengers," which was disagreed to.

Mr. Chase moved to amend the same by striking out the word "two" before "messenger," which was agreed to. The said resolution was then adopted, the rules having been first suspended for that purpose.

Mr. Chase introduced the following resolution, which was read, to wit: "*Resolved*, That a committee of — be appointed by the chairman, which shall be chosen by ballot to prepare and present articles to be adopted for the constitution."

The convention then proceeded to ballot for president; and a ballot having been taken and counted, the tellers reported the whole number of votes given to be 66, of which Morgan L. Martin received 41, John H. Rountree 20, Charles Dunn 1, Blank 4. Morgan L. Martin having received a majority of all the votes given for that office was declared duly elected president of the convention.

Mr. Beall moved that a committee of two be appointed to conduct the president-elect to the chair, which was agreed to. The Chair appointed Messrs. Beall and King as such committee.

The President after having been conducted to his seat rose and addressed the convention as follows:

GENTLEMEN: Before assuming the chair allow me to express my sincere and grateful acknowledgments for the distinguished and honorable position you have assigned me in this body. The occasion which calls us together is one of no ordinary importance. The trust committed to us of fixing the organic laws under which the people of the territory are to assume the sovereignty and functions of an independent government is of a delicate and responsible character and can only be properly discharged in a spirit of harmony, concession, and compromise. Let these be the watchwords during our session, and I may safely assure you that the duties of the chair will be easy of performance, the intercourse and labors of the members will be pleasant and agreeable, and the work we may accomplish will confer honor upon the convention, be acceptable to our constituents, and secure the permanent welfare and prosperity of our people.

Mr. Jackson moved that the convention proceed to elect the remaining officers of the convention viva voce, which was agreed to; and for the office of secretary Thomas McHugh received 44 votes, W. W. Brown 22. Thomas McHugh having received a majority of all the votes cast for that office was declared duly elected secretary of the convention.

For the office of assistant secretary Robert L. Ream received 44 votes, J. R. Brigham 22. Robert L. Ream having received a majority of all the votes cast for that office was declared duly elected assistant secretary.

For the office of sergeant at arms Edgar R. Hugunin received 42 votes, William T. Getty 21. Edgar R. Hugunin having received a majority of all the votes given for that office was declared duly elected sergeant at arms.

For the office of doorkeeper Douglass Randall received 44 votes, Frederick Hollman 18, William T. Getty 1, L. McConnell 1, Blank 1. Douglass Randall having received a majority of all the votes given for that office was declared duly elected doorkeeper.

For the office of messenger Huntington Tipple received 44 votes, Matthew Bishop 49, William T. Getty 8, Frederick Hollman 3, Blank 18. Huntington Tipple and Matthew Bishop having received a majority of all the votes given for that office were declared duly elected messengers.

For the office of fireman William M. Mott received 50 votes, William T Getty 2, Blank 11. William M. Mott having received a majority of all the votes given for that office was declared duly elected fireman.

Mr. Chase moved that the convention proceed to ballot for printer. Mr. Jackson moved that said motion be laid upon the table, which was agreed to.

Mr. Wheeler introduced the following resolution, which was read, to wit: "*Resolved*, That Messrs. Tenney, Smith and Holt, proprietors of the *Wisconsin Argus*, be employed to do the printing of this convention."

Mr. Beall introduced the following resolutions, which were read, to wit: "*Resolved*, first, That all printing for or by order of this convention shall be done under the direction of a committee of three members to be called the committee on printing.

"Second. That before any such printing be executed the said committee shall issue written proposals for the same and submit them to the several papers in this village, requesting the conductors thereof to submit to them on a certain day the terms upon which they will execute the printing, accompany-

ing such offer with good and satisfactory surety that the same shall be performed according to the proposals submitted.

"Third. That upon the receipt of such terms the printing shall be let to the lowest bidder."

Mr. Kilbourn introduced No. 1, resolution relative to amendments; No. 2, resolution relative to the judiciary; No. 3, resolution relative to the legislature; No. 4, resolution relative to banks and banking, which were severally read. Mr. Kilbourn moved that the same be printed, which was agreed to. And a division having been called for, there were 45 in the affirmative, negatives not counted.

Mr. Kilbourn said he doubted not that it was the desire of every member of the convention that the session should continue as short a time and be attended with as little expense as was consistent with the good of the public. The people both desired and expected a short session, and as their organization had now been completed he begged leave to submit several propositions for their consideration which he had embodied in the shape of resolutions. He did so for the purpose of presenting in a concise form some of the leading questions which would occupy their time, and of more strongly impressing them upon their immediate attention.

The whole community had very recently been excessively agitated with the question of adopting or rejecting the old constitution. A large majority of the people had by their votes declared against that instrument in consequence of a few provisions which they had regarded as most pernicious. It was the province of this body to study out and avoid those measures known to be repugnant to the popular will, and although there might be some little difference of opinion as to what those articles were and precisely to what extent they had been condemned, yet he apprehended that all would agree that the judiciary article, the bank article, and the articles on exemption and the rights of married women were most prominent and had met with most disapprobation. Had it not been for these, in his opinion the old constitution would have been very generally acceptable. Coupled as they had been together, however, both good and bad, and incapable of separation, the whole had been lost.

A great error in the organization of the last convention, to his view, was that by far too many committees had been formed and the several parts of the constitution thus distributed into too many hands. The consequence was that the instrument when finally completed was lacking in that consistency and harmony in all its parts which so important a document ought to possess.

To obviate this difficulty the plan he proposed was that a large committee—say of fifteen—should be appointed, to whom all articles save those he had enumerated as obviously condemned should be referred, and such alterations made and new articles incorporated as they might deem proper or as might be directed by the convention, reserving the consideration of those articles for the committee of the whole. By the adoption of this course he felt satisfied that three weeks would amply suffice to complete their labors.

He therefore submitted the following resolutions and moved that they be printed for the use of the members: "*Resolved*, That the convention deem it inexpedient to draft an entirely new constitution, inasmuch as the greater part of the late constitution was beyond a doubt approved by the general voice of the country; but there being some provisions contained in that instrument sufficiently objectionable to defeat the whole, and as there are some minor points requiring modification in order to harmonize the different parts; therefore, in order to correct discrepancies, remove tautologous provisions, and produce harmony in the different sections of the constitution, be it further

"*Resolved*, That a select committee on revision be appointed, consisting of fifteen members, to whom shall be referred the late constitution (except so much as is embraced in the articles on the judiciary, legislature, banking, and exemption and rights of married women), whose duty it shall be to revise the same, adopting such parts of it as they may deem expedient, amending it where it may seem necessary, and incorporating such new articles as shall be directed by the convention; and when so amended, report to this convention an entire bill embracing the whole constitution as adopted by said committee.

"*Resolved*, That a select committee of five members be appointed to whom shall be referred the subject of the judiciary, whose duty it shall be to report as early as practicable an article on that subject, embracing the following general features, viz.: a supreme court or court of appeals, district court, and county courts, the latter to have jurisdiction in all civil actions and minor criminal actions, and to discharge all the duties of probate courts; and all said courts to be elective.

"*Resolved*, That a committee of five members be appointed to whom shall be referred the subject of organization, powers, duties, and restrictions of the legislature, whose duty it shall be to report an article on that subject as early as practicable, embracing the following general features, viz.: the election of senators and representatives by single districts; a house of representatives, consisting of not more than forty-five members, until the apportionment which will be made after the year 1850 on the census of that year, and thereafter never to be less than forty-five, nor more than eighty; and the senate never to consist of less than one-third nor more than one-half the members constituting the house. In other respects, said article to consist mainly of the provisions contained in the late constitution relative to the legislature, with such amendments as may seem meet and proper.

"*Resolved,* That the committee on revision be instructed to report the following article on banks and banking:

" 'Section 1. The legislature shall not have power to authorize or incorporate by special act any bank or other institution having any banking power or privilege nor confer on any corporation, institution, association, person or persons any banking power or privilege; but corporations or associations may be formed for such purposes under general laws, which laws shall be submitted to a vote of the electors of the state qualified to vote for members of the legislature; and if approved by a majority of the votes given on that subject such law shall thereafter be in force until repealed or amended by a like vote; but if not so approved the same shall be rejected and void.

" 'Section 2. No corporation, institution, association, person or persons shall issue any bill, note, or other paper in the form of bank bills, nor in any other form intended to circulate as money, except in pursuance of law authorizing such issue, passed and approved agreeably to the first section of this article.

" 'Section 3. The legislature shall have no power to pass any law sanctioning in any manner directly or indirectly the suspension of specie payments by any person, association, or corporation; [the] issue of bank notes or notes of circulation of any description.

" 'Section 4. The legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money and shall require ample security for the redemption of the same in specie.

" 'Section 5. In case of the insolvency of any bank or banking association the bill holders thereof shall be entitled to preference in payment over all other creditors of such bank or association.

" 'Section 6. The stockholders in any corporation or association for banking purposes issuing bank notes or any kind of paper credits to circulate as money, shall be indirectly responsible to the amount of their respective share or shares of stock in any such corporation or association for all its debts or liabilities of any kind.' "

The reading of the resolutions being concluded, Mr. Lovell said he did not agree with the gentleman in his plan of arranging the business of the convention. It was forestalling the action of that body; and the propositions themselves opened a wide field for controversy. He felt satisfied that if adopted they would tend to retard rather than expedite the business of the session. At best, they were a mere expression of individual opinion— such an one as any member might make—and he could not see, therefore, that they were entitled to any special consideration and especially to the distinction of being printed.

Mr. Judd concurred in the opinion that the propositions were improper at the present stage of the proceedings. Should they be adopted and other members see fit to follow the precedent of thrust-

ing their own individual plans before the convention, it might lead to great confusion and endless expense for printing.

Mr. Dunn thought the motion to print should prevail. The object of printing was to enable every member to see the full extent of every proposition submitted to his consideration. It was not a special distinction, but a measure of necessity, without which they could not safely act upon the contents of any bill or other proposition which might be offered. He apprehended that the danger of incurring great expense from this source was slight indeed—not half equal to the expense of delaying the proceedings of this body for a single hour. The motion was both reasonable and proper, and he trusted would be adopted.

Mr. Chase hoped the motion would not prevail. The resolutions could be regarded in no other light than as instructions—thus forestalling the action of that body upon the subjects which they presented. He trusted that the usual and necessary committees would be appointed, and the various articles brought forward in their own proper order, untrammeled by any action of the kind proposed.

Mr. Kilbourn explained at some length the object which induced him to offer his proposition, disclaiming entirely any intention of inducing premature action. He believed they would expedite the business of the session—an object he most sincerely desired. If adopted, the convention would confine itself entirely to the discussion and settling of principles, and the committees having thus been instructed as to what would be required of them could frame the articles accordingly; whereas by the method before pursued the committees had first to report, and then great delay was caused by the discussions which sprang up and amendments which were made to their labors.

Mr. Beall expressed himself in opposition to both the spirit and the intention of the gentleman's propositions. The people did not want the old constitution amended, but a new one framed; and members had been sent here for that purpose. He hoped therefore that they would at once set about it.

Mr. Castleman said he had seconded the motion to print. He did so because he was not intimately acquainted with the proceedings of a deliberative body, and unless the propositions were printed and laid upon his desk he could not take in their whole scope at once.

The motion to print, on a division being called, prevailed, there being 45 in the affirmative, negatives not counted.

Mr. Larrabee introduced the following resolution, which was read, to wit: "*Resolved,* That a committee of five be appointed by the chair, who shall ascertain the number of standing committees necessary for the business of the convention and report the same with their respective designations and duties."

Mr. A. G. Cole introduced the following resolution, to wit: "*Resolved,* That the president be directed to invite the resident clergymen of Madison to attend alternately and open the convention each morning with prayer." And the rules having been first suspended for that purpose, the said resolution was adopted.

Mr. Reed introduced the following resolution, which was read, to wit: "*Resolved,* That each member of the convention be furnished with sixty copies of any weekly newspaper published in Madison during the session of the convention."

Mr. Sanders introduced the following resolution, to wit: "*Resolved,* That a committee of seven be appointed to report rules and regulations for the government of the proceedings of this convention, and that said committee be instructed to report tomorrow morning immediately after the opening of the convention." And the rules having been first suspended for that purpose, the said resolution was adopted.

Mr. Richardson introduced the following resolution, which was read, to wit: "*Resolved,* That 100 copies of all reports of all committees and of all petitions and resolutions ordered to be printed be printed for the use of the convention without further order."

Mr. Chase introduced the following resolution, to wit: "*Resolved,* That the officers of this convention are hereby directed to have this hall swept and warmed by seven o'clock A.M. each day during the session." And the rules having been first suspended for that purpose, the said resolution was adopted.

Mr. Fenton asked leave to present to the convention the petition of Col. William S. Hamilton, a citizen of Lafayette County, asking for permission to contest the seat of the Hon. John O'Connor.

He remarked that he did so at the particular request of Colonel Hamilton, and as an act of courtesy to him, and that he knew nothing of the merits or demerits of the controversy.

Mr. Whiton introduced the following resolution, which was read, to wit: "*Resolved,* That the petition of William S. Hamilton, relative to the seat of the Hon. John O'Connor, be referred to a committee of five members, before whom the petitioner and the said John O'Connor are to appear; and said committee shall receive such proof and allegations as the parties shall judge proper to offer; and the said committee shall have power to appoint a commissioner or commissioners to take depositions in the counties of Iowa and Lafayette: *Provided,* That either party or their attorneys, duly authorized, may be present at the taking of such depositions and may put interrogatories if he or they think fit; and the depositions so taken shall be reduced to writing by a commissioner and subscribed by the witness, and when so taken shall be sealed up and sent to the president of the convention; and such commissioner or commissioners are hereby authorized and empowered to issue subpœnas to compel the attendance of witnesses.

"*Resolved,* That William S. Hamilton be allowed to appear before the convention, in person or by attorney, to advocate his claim to the seat now occupied by the Hon. John O'Connor."

Mr. Beall introduced the following resolution, to wit: *"Resolved,* That the secretary be directed to employ some person in Madison to do the incidental and other printing until the further order of the convention." And the rules having been first suspended for that purpose, the said resolution was adopted.

Mr. Gale introduced the following resolution, to wit: *"Resolved,* That the secretary of the territory be requested to certify to this convention the official canvass in each county of the votes given for and against the late constitution; and also that upon the separate article extending the right of suffrage to colored persons." The rules having been first suspended, Mr. Lovell moved to amend the resolution by striking out the word "secretary," and inserting the word "governor," which was disagreed ["agreed" in M. S.] to. The question then recurred on the adoption of the resolution. And having been put, it was decided in the affirmative.

The President announced the appointment of the following committee to whom was referred a revision of the standing rules, to wit: Messrs. Sanders, Dunn, Prentiss, Bishop, Estabrook, Lewis, and King.

Mr. King moved that the rules be suspended in order to take up the resolutions introduced by Mr. Whiton, relative to the petition of Mr. Hamilton, which was agreed to.

And pending the question on the adoption of said resolutions, on motion of Mr. Chase the convention adjourned until three o'clock P.M.

THREE O'CLOCK P.M.

The pending question being on the adoption of the resolutions introduced by Mr. Whiton, Mr. Chase moved to amend the same by striking out all after the word "offer" in the seventh line.

Mr. Chase said he did not believe it to be the duty of the convention to send commissioners through two or three counties to collect testimony. He considered it the duty of the petitioner claiming the seat to procure the testimony upon which he predicated his claim. If commissioners were appointed to traverse the country in search of testimony, an interminable expense would be incurred. He was not sufficiently acquainted with law to say whether in such a case witnesses could be compelled to appear and testify. He had no objection to the appointment of a committee to investigate the case upon any testimony which might be brought before them, but he did object to sending commissioners abroad to procure testimony at the expense of the territory.

Mr. Whiton thought the gentleman from Fond du Lac (Mr. Chase) misapprehended the effect of the resolution. It did not contemplate sending commissioners from Madison to take this testimony, but to appoint some suitable persons in the counties where

the testimony was to be taken, and could not involve any great expense. Some such course seemed to be necessary, as the claimant could not compel the witnesses to appear before a justice of the peace and give testimony in such a case. The allegations set forth by the claimant were of such a nature as to entitle his petition to consideration, and he hoped the convention would treat the question fairly.

Mr. Chase said the remarks of the gentleman from Rock had not removed his objections. The appointment of commissioners to take the testimony would be attended with a very considerable expense which ought not to be borne by the territory. Had the resolution provided that the expense should be paid by the claimant, he should not have objected to it.

Mr. Whiton would ask the gentleman from Fond du Lac if he would be obliged to vote for an appropriation to pay the expenses which might be incurred. Mr. Chase replied that if the convention appointed commissioners, they would become the agents of the convention, employed to perform certain duties; and the convention, he thought, would be in honor bound to pay them.

The amendment was disagreed to. And a division having been called for, there were 21 in the affirmative and 28 in the negative.

The question then recurred on the original resolutions. And a division of the question having been called for, Mr. Kilbourn moved to amend the first resolution by adding the following proviso: "*Provided*, further, That the expense of said commission and proceedings be paid by the parties interested."

Mr. Judd moved to amend the amendment by striking out of the original resolution all after the word "offered."

Mr. Judd did not feel prepared to vote for the amendment at that time. He was in some doubt as to what was the duty of the convention in such a case. He thought the convention should hear the petition and refer it to a committee for the hearing of such testimony as might be presented by the claimant. The committee could then judge what further steps might be necessary and report to the convention, and if necessary ask for further authority. The committee might find the testimony already on the ground sufficient to entitle the contestant to his seat; or that such testimony did probably exist and might be obtained by sending abroad; or they might become satisfied that there was so little foundation to the claim that it should not be further prosecuted but at the expense of the con-

testant. He did not, therefore, at the present stage of the case feel prepared to say whether the expenses should be paid by the petitioner or not.

The amendment to the amendment was disagreed to. And a division having been called for, there were 26 in the affirmative and 28 in the negative.

The question then recurred on the amendment of Mr. Kilbourn.

Mr. Whiton said he was no better prepared to vote for the amendment than the gentleman from Dodge (Mr. Judd). They could not tell without some investigation whether justice would require that the expenses should be paid by the territory or by the claimant. While up, he would say that the gentleman from Dodge had in one respect mistaken the object of the resolution. It did not require them to send abroad for testimony unless upon investigation they should consider it necessary.

After a few remarks by Mr. Kilbourn in support of his amendment, the question was put and decided in the negative. And a division having been called for, there were 23 in the affirmative and 31 in the negative. The question was then put on the adoption of the original resolution, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 40, negative 23; for the vote see Appendix I, roll call 1]. The second resolution was then adopted.

The President announced the appointment of the following committee under said resolutions, to wit: Messrs. Whiton, Fenton, Rountree, Lovell, and Kilbourn.

Mr. Fenton introduced the following resolution, to wit: "*Resolved*, That the treasurer of the territory be and he is hereby instructed to pay the postage bills of members of this convention." And the rule having been first suspended for that purpose, the said resolution was adopted.

Mr. Case introduced the following resolution, to wit: "*Resolved*, That the secretary be directed to procure a printed list of the members of this convention together with the name of the county they represent, their post office, place of nativity, age, boarding place, and profession or occupation." And the rules having been first suspended for that purpose, the said resolution was adopted.

The rules having been first suspended, the resolution introduced by Mr. Reed, relative to newspapers, was taken up, when Mr. Larrabee moved to amend the same by striking out the words "at Madison" and inserting the words "in this territory," which was agreed to.

Mr. Whiton moved to amend the resolution by striking out the word "sixty" and inserting the lieu thereof the word "forty."

Mr. Reed was opposed to the amendment. He thought sixty copies a sufficiently small number; at least it was so in his case. He

represented a large district of country, and the people had but limited means of information, and he feared that a less number than sixty would not go round with his constituents. The same was true of all the northern counties; and he hoped that gentlemen from the more populous counties where they had local papers, through which intelligence would be circulated, would not forget the more urgent necessities of those representing the larger areas in the northern portions of the territory.

The amendment was agreed to; the resolution as amended was then adopted.

Mr. Sanders, from the committee to whom had been referred the subject of a revision of the rules, reported rules for the government of this convention. A division of the question on the adoption of said rules having been called for, Mr. Judd moved to amend the eleventh rule by striking out the syllable "in" in the word "indivisible," which was agreed to. And a division having been called for, there were 29 in the affirmative and 17 in the negative.

Mr. King moved to amend the fifteenth rule by striking out the words "four and one-half P.M." and inserting in lieu thereof the word "five."

Mr. Whiton moved to amend the amendment by substituting for the original rule: "Fifteenth. The standing time for the daily meeting of the convention shall be ten o'clock in the morning, until the convention shall otherwise direct," which was agreed to.

Mr. Gale moved to amend the seventeenth rule by inserting after the words "cannot be made" the following: "But a journal of the proceedings in the committee of the whole shall be kept," which was disagreed to.

Mr. Judd moved to amend the fifteenth rule by adding the following: "*Provided*, however, That this rule shall not be so construed as to prevent a majority of the convention from taking up the report of the said committee and making any alterations or amendments thereto," which was agreed to. The rule as amended was then adopted.

The rules as amended and adopted were as follows:

RULES

"First. The president shall take the chair at the hour to which the convention shall have adjourned, shall immediately call the members to order, and on the appearance of a quorum shall cause the journal of the preceding day to be read and corrected.

"Second. The president shall preserve order and decorum and decide questions of order, subject to an appeal to the convention. He shall have the right to name any member to perform the duties of the chair; but such substitution shall not extend beyond an adjournment. He shall also appoint all committees, unless otherwise directed by the convention.

"Third. The president shall be required to vote on all questions, and on calling the ayes and noes his name shall be called in alphabetical order as Mr. President.

"Fourth. After the journal has been read and corrected, the order of business shall be as follows, viz.:

1. The presentation of petitions.
2. Reports of committees.
3. The presentation and consideration of resolutions: *Provided*, That one hour only shall be occupied in the foregoing three orders of business. And *Provided*, further, That every motion or resolution shall be reduced to writing, if requested by the president or any member.
4. Unfinished business and the business which has most progressed shall be first taken up, and of that portion of business which is in the same state of progress, that which was first introduced shall be first taken up; and it shall be the duty of the president to put all questions arising in regular order, without any special motion therefor.

"Fifth. No resolution shall be acted upon on the same day upon which it is presented.

"Sixth. One hundred copies of all reports, petitions, and resolutions ordered to be printed, shall be printed for the use of the convention without further order.

"Seventh. No member shall speak more than twice on the same question without leave, nor more than once until every other member rising to speak shall have spoken; and he shall confine himself to the question under debate and avoid personality.

"Eighth. Whenever any member is called to order, he shall sit down until it is determined whether he is in order or not; and after such determination he shall be permitted to proceed in order.

"Ninth. When a question is under debate, no motion shall be received, unless to adjourn, to lay on the table, for the previous question, to postpone to a day certain, to commit, to amend, or to postpone indefinitely; and these several motions shall have precedence in the order in which they stand arranged. A motion to postpone to a day certain, to commit, to amend, or postpone indefinitely being decided, shall not be again allowed on the same day, and at the same stage of the proposition.

"Tenth. A motion to adjourn shall always be in order; and that, and a motion to lay on the table, and all motions in relation to the priority of business shall be decided without debate.

"Eleventh. The previous question shall be in this form: 'Shall the main question be now put?' It shall only be admitted when demanded by a majority of the members present; and its effects shall be to put an end to all debate and bring the convention to a direct vote on the amendments reported by a committee, if any, upon pending amendments, and then upon the main question. On a motion for the previous question and prior to seconding the same a call of the convention shall be in order; but after a majority have seconded such motion no call shall be in order prior to a decision of the main question. On a previous question there shall be no debate. All incidental questions of order, after a motion is made for the previous question, and pending such motion, shall be decided, whether on appeal or otherwise, without debate.

"Twelfth. When a motion or question has been once put and decided in the affirmative or negative, it shall be in order for any member who voted in the majority, or when the convention is equally divided, for a member who voted in the negative, to move for a reconsideration thereof, on the same or the succeeding day; and when the motion to reconsider is not made on the same or succeeding day, at least two days' notice of intention to make such motion shall be given.

"Thirteenth. Any member may call for a division of the question, when the same will admit of it. A motion to strike out and insert shall be deemed to be divisible. A motion to strike out, being lost, shall not preclude an amendment, nor a motion to strike out and insert.

"Fourteenth. The ayes and noes may be called upon any question at the request of any nine members of the convention; and when the final vote shall be taken upon each distinctive article in the constitution it shall be by the ayes and noes.

"Fifteenth. Nine members may make a call of the convention and require absent members to be sent for; but a call of the convention cannot be made after the voting has commenced; and, the call of the convention being ordered, and the absentees noted, the doors shall be closed and no member permitted to leave the room until the report of the sergeant at arms be received and acted upon, or further proceedings in the call be suspended.

"Sixteenth. A member may call for a division of the convention upon any question either before or after a decision by the president.

"Seventeenth. The standing hour for the daily meeting of the convention shall be ten o'clock in the morning until the convention shall otherwise direct.

"Eighteenth. The rules of parliamentary practice comprised in Jefferson's *Manual* shall govern the convention in all cases to which they are applicable and in which they are not inconsistent with these rules and the order of the convention.

"Nineteenth. Every article which it is proposed shall form a part of the constitution shall be considered in committee of the whole; and the rules observed in convention shall govern, as far as practicable, the proceedings in committee of the whole, except that a member may speak oftener than twice on the same subject, and that a call for the yeas and nays or for the previous question cannot be made. Amendments made in committee of the whole shall be entered on a separate piece of paper and so reported to the convention by the chairman, standing in his place; which amendments shall not be read by the president unless required by one or more of the members.

"Twentieth. Every article which it is proposed shall form a part of the constitution shall be read the first and second times and be referred to the committee of the whole; and after it shall have been considered in committee of the whole, and after the amendments reported by the committee of the whole shall have been acted on, it shall be open to amendment in the convention; and when there are no further amendments to be proposed, the question shall be on ordering the article to be engrossed for its third reading; and after the same shall have been engrossed the same shall not be amended except by the unanimous consent of the convention. And after the article has been read a third time and passed, it shall be referred to the committee on revision

and arrangement, who shall report to the convention all such verbal amendments as they shall deem expedient, not changing in any manner the substance of such article: *Provided,* however, That this rule shall not be so construed as to prevent a majority of the convention from taking up the report of the said committee and making any alterations or amendments thereto.

"Twenty-first. No standing rules or order of the convention shall be changed or rescinded without one day's previous notice being given of the motion therefor. Nor shall they be altered, changed, rescinded, or suspended unless upon the vote of two-thirds of the members present."

On motion of Mr. Secor the convention adjourned.

FRIDAY, DECEMBER 17, 1847

Prayer by the Rev. Mr. Read.

The journal of yesterday was read and corrected.

The President laid before the convention a communication from the Secretary of the territory in accordance with a resolution adopted on yesterday, as follows:

OFFICE OF THE SECRETARY OF WISCONSIN TERRITORY,
MADISON, December 17, 1847.

HON. M. L. MARTIN,

President of the Convention, Madison, W. T.

SIR—I have the honor herewith to transmit an abstract of the votes cast on the sixth day of April last, in this territory, on the question of the adoption of the constitution, and of equal suffrage to colored persons, in compliance with a resolution passed by the convention over which you preside, on yesterday.

With great respect, your obed't servant,

JOHN CATLIN,
Secretary, Wisconsin Territory.

ABSTRACT

Of the votes given at an election held on the 6th day of April, A. D. 1847, in the several counties of the territory of Wisconsin, for and against the adoption of the constitution and for and against equal suffrage to colored persons.

Names of Counties	For constitution	Against constitution	Equal suffrage to colored persons Yes	Equal suffrage to colored persons No
Brown*	235	120	30	236
Manitowoc*	96	45	1	120
Crawford	49	150	2	153
Columbia	66	354	70	267
Dane	592	962	291	693
Dodge	803	974	483	444
Grant	532	1898	93	2215
Fond du Lac	624	627	450	399
Green	341	607	129	628
Iowa†				
Lafayette†	1444	1417	69	2504
Richland†				
Jefferson	780	1233	598	525
Marquette	184	189	147	140
Milwaukee	1678	1996	616	1032
Rock	987	1977	858	994
Portage	164	209	11	253
Racine	1363	2474	1206	763
Sauk	111	157	58	143
Sheboygan	160	374	145	217
St. Croix	65	61	1	126
Walworth	984	2027	1094	714
Washington	1478	353	84	1328
Waukesha	1246	1825	1107	617
Winnebago	137	203	121	104

* One district. † One district, and returned from the district and not from each county.

OFFICE OF THE SECRETARY OF WISCONSIN TERRITORY,
MADISON, December 16, 1847.

I certify the foregoing to be a true abstract of the vote given on the sixth day of April, A. D. 1847, in the territory of Wisconsin, for and against the constitution, and for and against equal suffrage to colored persons, as appears from the returns made to the executive office.

JOHN CATLIN,
Secretary, Wisconsin Territory.

Mr. Gale moved that the same be printed. Mr. King moved that the motion be laid upon the table, which was agreed to.

Mr. A. G. Cole introduced the following resolution, to wit: *"Resolved,* That 150 copies of the rules adopted for the government of this convention be printed in pamphlet form for the use of the members thereof."

Mr. King moved that the same be laid upon the table, which was agreed to. And a division having been called for, there were 42 in the affirmative, negatives not counted.

Mr. Lovell introduced the following resolution, to wit: *"Resolved,* That the following rules be adopted and inserted among the rules before the fifth rule, viz.: 'Fifth. That no resolution shall be acted upon the same day upon which it is presented.

" 'Sixth. That 100 copies of all reports, petitions, and resolutions ordered to be printed, [be printed] for the use of the convention without further order.' "

Mr. Chase introduced the following resolution, to wit: *"Resolved,* That a committee of three be appointed to define the duties of the officers of this for, there were 30 in the affirmative and 6 in the negative.
convention." And the question having been put on the adoption of the same, it was decided in the affirmative. And a division having been called

Mr. Kilbourn introduced the following resolution, which was adopted, to wit: *"Resolved,* That the sum of $5.00 be paid to Erastus D. Brown as messenger of this convention."

Mr. Wheeler introduced the following resolution, to wit: *Resolved,* That the fireman be authorized to employ some suitable person to act as assistant fireman to this convention." Mr. Judd moved that the same be laid upon the table, which was agreed to.

The resolution introduced yesterday by Mr. Chase, relative to the appointment of a committee to present articles for the action of the convention, was then taken up.

[Mr. Chase remarked that he was of opinion that it was better to refer the whole subject of a constitution to a large committee than to divide it up and refer it to small ones. And as the gentleman from Milwaukee (Mr. Kilbourn) had submitted the propositions for this purpose, he would move to lay the resolution on the table.

Mr. Kilbourn hoped the gentleman would withdraw his motion to lay on the table and that the resolution would be passed and the committee appointed. He hoped his resolutions would not be acted upon without proper consideration.

Mr. Chase withdrew his motion.—*Tri-Weekly Express*, Dec. 18, 1847.]

Mr. Judd moved to amend the same by striking out all after the word "*Resolved*" and inserting: "That a committee of nine be appointed to prepare and submit a plan for the progress of the convention, the number of committees to be appointed, and such other suggestions as they shall deem proper and expedient"; which was accepted by Mr. Chase as a modification of the original resolution. The resolution, as modified, was then adopted.

The resolution introduced by Mr. Wheeler yesterday, relative to printing, was then taken up, when Mr. Fox moved to amend by striking out all after the word "*Resolved*" and inserting: "That H. A. Tenney be employed to do the printing for this convention, and that a committee of five be appointed by the president, to fix a price to be paid for said printing"; which was accepted by Mr. Wheeler as a modification of his resolution. By substituting the resolutions introduced Mr. Richardson moved that the same be laid upon the table. And the question having been put, it was decided in the negative. And the ayes and noes having been called for, those who voted in the affirmative were [affirmative 30, negative 35; for the vote see Appendix I, roll call 2].

Mr. King moved to amend by striking out "H. A. Tenney" and inserting "W. W. Wyman."

Mr. Beall moved to amend the amendment by substituting the resolutions introduced by him yesterday in relation to printing.

[Mr. Fox said he was placed in a peculiar situation in reference to this matter. As a member from Dane County, he had to decide between two offices of the same party. He had hoped the matter would have been decided upon in caucus last evening. He was himself a working man; he wanted good pay for his labor and he was willing to pay well for work done. He was opposed to the picayune business of getting work done cheaper than it could be afforded and he thought this resolution calculated to have this effect. He did not think it was proper to support two Democratic offices in this place and was in favor of having one killed off. Peculiar circumstances led him to support the *Argus*. The *Democrat* office had the printing of the last convention; and it was but proper to give it to the *Argus* this time. He was not willing to give the printing to a Whig office, as it could not be expected that a Whig paper would support Democratic principles.

After a few remarks by Mr. Sanders in favor of the resolution, Mr. Judd said he had not intended to have taken any part in the debate and would not have arisen but for the remarks of the gentleman from Dane (Mr. Fox). That gentleman had referred to a caucus held last evening for the purpose of deciding this matter of

printing. He said he was chairman of a caucus last evening, but no action calculated to determine the matter of printing was submitted; and he never would act as presiding officer of a caucus or have anything to do with one which was designed to dictate on matters for legislative action. He was willing to meet his Democratic brethren in caucus for the purpose of designating persons to fill offices already created, but was unwilling to caucus for the creation of offices.—*Tri-Weekly Express*, Dec. 18, 1847.]

And the question having been put on adopting the same, it was decided in the affirmative. And the ayes and noes having been called for, those who voted in the affirmative were [affirmative 38; negative 27; for the vote see Appendix I, roll call 3].

Mr. Chase moved that the resolution be referred to a committee of three with instructions to report thereon at the next meeting of the convention, which was agreed to.

The President announced the appointment of the following committee to whom said resolution was referred, to wit: Messrs. Wheeler, Chase, and Bishop.

The resolutions introduced by Mr. Kilbourn yesterday were taken up, when Mr. Lovell moved that the sixth resolution be referred to the committee of nine to be appointed under the resolution of Mr. Judd, which was agreed to.

The seventh, eighth, and ninth resolutions were on motion of Mr. Kilbourn laid upon the table.

Resolution No. 10, introduced yesterday by Mr. Larrabee, was taken up, when Mr. Larrabee asked leave to withdraw the same. Leave was granted.

The resolution introduced by Mr. Richardson yesterday, relative to the number of resolutions, etc. to be printed, was taken up, when Mr. Chase moved that the same be laid upon the table, which was agreed to.

Mr. Fenton introduced the following resolution, to wit: "*Resolved*, That the secretary be authorized to employ, when necessary, suitable assistance to do the writing of this convention." Mr. King moved that the same be laid upon the table, which was disagreed to. [The question was then put on the adoption of the resolution, and was decided in the negative.]

[Mr. King moved to lay the resolution on the table to await the report of the committee on printing; as, if that was to be let out by contract, he saw no reason why this should not be done in the same manner; which was lost.

Mr. Featherstonhaugh said he had been informed by the secretary that assistance was needed; he had his word for it and was willing to give it. He could not see how this matter could be compared with that of printing; if this principle prevailed, he should expect a proposition to let out the chaplaincy by contract.

Mr. Castleman would oppose the resolution on the same ground as the gentleman from Milwaukee (Mr. King). He would leave the matter for the convention to appoint such assistance as may be wanted from time to time.

Mr. Whiton hoped the resolution would not pass. He was opposed to giving too much power to the officers of the convention. A motion of his yesterday, relative to leaving the appointment of messengers to the president, was successfully opposed on this ground.

Mr. Judd said he should oppose the resolution—not, however, for fear of giving too much power; but he was in favor of having the secretary inform the convention when assistance was necessary, and they could decide who should render it.

Mr. Fenton was not afraid to trust the secretary. It had been the custom in all legislative bodies to give him this power, and he thought it very proper, as the secretary knew better who would be suitable persons to do such writing, than the convention could.

The resolution was lost.—*Tri-Weekly Express*, Dec. 18, 1847.]

On motion of Mr. Judd the convention adjourned.

SATURDAY, DECEMBER 18, 1847

Prayer by the Rev. Mr. Lord.

The journal of yesterday was read.

Mr. Chase, from the committee to whom was referred the resolution relative to standing committees, made the following report, to wit:

"The committee to whom was referred the resolution to provide for [the appointment] of standing committees respectfully submit the following:

1. A committee of fifteen on general provisions, comprising preamble; boundaries and admission of the state; suffrage and elective franchise: internal improvements; taxation, finance, and public debt; militia; eminent domain and property of the state; bill of rights; and such other provisions as may be referred to them.

2. A committee of seven on the executive, legislative, and administrative provisions.

3. A committee of five on the judiciary.

4. A Committee of nine on education and school funds.

5. A committee of five on banks, banking, and incorporations.

6. A committee of seven on a schedule and other miscellaneous provisions.

"Your committee deem it inexpedient to recommend in their report any instructions to the respective committees, or specifically to divide and define the various subjects referred to them respectively."

The said report was adopted.

The said committee also reported back resolution No. 6, of December 16, without recommending that any action be taken on the same, and asked to be discharged from the further consideration of the subject. The said report was accepted and the committee discharged.

The President announced the appointment of the following committee under the resolution of Mr. Chase of yesterday, instructing the committee to define the duties of certain officers, to wit: Messrs. Chase, Stedman, and Jones.

Mr. Fenton introduced the following resolution, which was adopted, to wit: "*Resolved*, That the secretary be authorized under the direction of the president to employ suitable assistance to do the necessary writing of the convention."

Mr. Prentiss introduced the following resolutions, to wit: "*Resolved*, That the Congress of the United States be and is hereby requested upon the application of Wisconsin for admission into the Union, so to alter the provisions of the act of Congress entitled 'An Act to grant a quantity of land to the territory of Wisconsin for the purpose of aiding in opening a canal to connect the waters of Lake Michigan with those of Rock River,' approved June eighteenth, eighteen hundred and thirty-eight, and so to alter the terms and conditions of the grant made therein, that the odd-numbered sections thereby granted and

the proceeds of so much thereof as shall have been sold by the territory of Wisconsin may be held and disposed of by the state of Wisconsin as part of the five hundred thousand acres of land to which said state is entitled by the provisions of an act of Congress entitled 'An Act to appropriate the proceeds of the sales of the public lands and to grant preëmption rights,' approved the fourth day of September, eighteen hundred and forty-one. And further, that the even-numbered sections reserved by Congress may be offered for sale by the United States for the same minimum price and subject to the same rights of preëmption as other public lands of the United States; and that the excess price over and above one dollar and twenty-five cents per acre which may have been paid by the purchasers of said sections which shall have been sold by the United States be remitted to the present owners thereof, or they be allowed to enter any of the public lands of the United States to an amount equal in value to the excess so paid as aforesaid.

"*Resolved*, That in case the said odd-numbered sections shall be ceded to the state as aforesaid the same shall be sold by the state in the same manner, at the same minimum price, and subject to the same rights of preëmption to occupants as the public lands of the United States are now sold; and the excess price over and above one dollar and twenty-five cents per acre, absolutely or conditionally contracted to be paid by the purchasers of any part of said sections, which shall have been sold by the territory of Wisconsin, shall be remitted to such purchasers, their representatives or assigns.

"*Resolved*, That Congress be requested upon the application of Wisconsin for admission into the Union to pass an act whereby the grant of five hundred thousand acres of land, to which the state of Wisconsin is entitled by the provisions of an act of Congress entitled 'An Act to appropriate the proceeds of the sales of the public lands and to grant preëmption rights,' approved the fourth day of September, eighteen hundred and forty-one, and also the five per centum of the net proceeds of the public lands lying within said state, to which it shall become entitled on its admission into the Union by the provisions of an act of Congress entitled 'An Act to enable the people of Wisconsin Territory to form a constitution and state government, and for the admission of such state into the Union,' approved the sixth day of August, eighteen hundred and forty-six, shall be granted to the state of Wisconsin for the use of schools, instead of [for] the purposes mentioned in that behalf in the said acts of Congress respectively.

"*Resolved*, That the foregoing resolutions be appended to and signed with the constitution of Wisconsin, and submitted therewith to the people of this territory, and to the Congress of the United States."

Mr. Prentiss said the resolutions were with some slight modifications the same as those appended to the rejected constitution on the subject of the canal lands. They were passed by the late convention with great unanimity and were highly satisfactory to his constituents, a considerable portion of whom were deeply interested in an immediate and final settlement of this vexed question of the

canal lands. Some of his constituents who are settlers on those lands urged him before he left home to use his endeavors to secure the adoption by the convention of the resolutions he had offered.

Mr. Castleman moved that the same be laid upon the table, and 150 copies thereof be printed, which was agreed to.

Mr. Wheeler, from the majority of the select committee to whom had been referred the resolution relative to printing, by leave made the following report, to wit:

"The committee to whom was referred the resolution of Mr. Beall in relation to printing have had the same under consideration and agree to make the following report:

"That they have given the subject so much attention as the limited time allowed them would permit, and the conclusions they have arrived at for the perfection of said resolution they hope will be satisfactory to the convention.

"Your committee recommend that instead of putting up the incidental printing at auction to be taken by the lowest bidder, as contemplated in said resolutions, this convention shall appoint a responsible printer to do the incidental printing of this body [under its own supervision, and to allow him a reasonable compensation therefor. And in regard to the journal of this body] your committee would recommend that by an order of this convention the printing thereof shall be done as contemplated in the forementioned resolutions, excepting that part which confines it to the village of Madison.

"Your committee would further report that the following are some of the reasons which have induced them to arrive at said conclusions:

"As an establishment fitted to do the [public] work requires a large outlay of capital and is kept in operation at a large expense, it has been deemed expedient, and hitherto practiced, to support a public press. [Much] of the public work must necessarily be done here. It is often hastily ordered; and delay in its execution would cost much more than the printing itself, the aggregate expense of which is trifling when compared with the cost of a single week's session of this body.

"Second, a public press having thus been established by prior usage, and printers induced to prepare themselves to do the public work, it is deemed inexpedient by your committee to take a course in regard to the matter, the effect of which will be to deprive the printer of a fair compensation; as the support due to a public press is not pay for mere physical labor, but for mental labor and talent in the business. If this is [not] done we cannot command the first talent; but it will fall into the hands of those illy fitted to give tone to the public sentiment of the country.

"It is the opinion of your committee that the public printer should be regarded in a different light from a mere mechanical laborer; that he is a subordinate officer of the public body which employs him; and that the scheme contemplated by the aforesaid resolutions will compel him to descend to competition and strife to get the business, to do which the custom and policy of the country have heretofore given him an honorable election. If this strife is en-

tered into, it is probable that in the excitement work will be engaged below remuneration [and] the public will be exposed to the use of bad materials and bad work by an effort of the printer to save himself from loss.

"Former experience has shown that when the printer has been deprived of a fair compensation our legislatures are besieged session after session for extra allowance, and often with success; and then the expense of legislating upon the subject is much more than a fair compensation in the first place. Thus your committee are of opinion that it is not in accordance with the dignity of this convention to attempt to get their work done for less than a fair compensation. From reasons of this kind and many more which suggest themselves to us the committee have come to the beforementioned conclusions.

"In conclusion, the committee would remark that they are no advocates of extravagant charges. If prices are too high, then reduce them. If there are fears that the public interest will suffer, then adequately guard them.

"We will cheerfully coöperate in any measure to promote true economy; but believing that this project is the reverse we cannot give our sanction to it.

"All of which is respectfully submitted.

WM. A. WHEELER, Chairman
C. BISHOP"

Mr. Chase, from the minority of said committee, made the following report, to wit:

"The minority of the committee on printing respectfully submit a report, dissenting from the views of the majority of said committee, in part, and recommending that the incidental printing for the convention be let to the lowest bidder, in accordance with the spirit of the resolution referred to them; and for the printing of the journal the minority concur in the report of the majority."

Mr. Judd moved that the majority and minority reports be recommitted and that two additional members be appointed on said committee by the convention.

Mr. Judd remarked that the gentleman from Dane, Mr. Wheeler, had moved a resolution that H. A. Tenney be employed to do the printing of this convention. The gentleman from Fond du Lac offered a substitute, which was adopted by the convention. He then inquired if the substitute was amendable, and was informed by the president that it was not. He did not at the time question the decision of the president; but now he did, and believed he could show ample authority that the decision was wrong. A disposition was felt to amend the proposition; and with that view a motion was made to commit it to a committee of three. Parliamentary usage required that a majority should be appointed from among the friends of the proposition. Instead of this the president had ap-

pointed two who voted against the proposition, and only one who was in favor of it, and it was for this reason that he moved to recommit, and that the committee be enlarged.

The President before putting the question would explain the points alluded to by the gentleman from Dodge. It was the original resolution offered by the gentleman from Dane which was referred to the committee, and not the substitute offered by the gentleman from Fond du Lac, and parliamentary usage required that a majority of the committee should be appointed from among the friends of the original resolution; and if the motion of the gentleman from Dodge prevailed, he should feel bound to appoint one in favor of the resolution, and one opposed to it.

Mr. Judd would inquire of the president if the substitute offered by the gentleman from Fond du Lac was not adopted by the convention.

The President: Certainly it was not.

Mr. Judd: Was not, then, the substitute referred to the committee?

The President: Not at all. The substitute, which was an amendment to the resolution, was cut off by the reference.

Mr. Prentiss hoped the motion to recommit would not prevail. The convention it seemed to him had consumed quite time enough in this troublesome matter of the printing. They had come hither to form a constitution, and not to engage in an interminable controversy about the printing. He hoped they would make a final disposition of the matter now. There was no need of any delay. There were two reports on the subject before the convention, one recommending one course of action, the other another course, and no gentleman suggests any other course than that embraced in the two reports; hence, nothing will be gained by delay. They can as well now, as at any other time, choose between the two reports and either go into an election of printer or let the printing out under contract.

The question having been put on said motion, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 26, negative 38; for the vote see Appendix I, roll call 4].

The resolution introduced yesterday by Mr. Lovell, relative to an amendment of the rules, was then taken up, when Mr. Gale called for a division of the question on their adoption. The President decided that the question was

divisible and would be first put on [the adoption of] the fifth rule. Mr. Gale moved that the same be laid upon the table, which was disagreed to. The question was then put on the adoption of said rule and was decided in the affirmative.

The sixth rule was then adopted.

The following resolution reported by Mr. Wheeler, from the majority of the committee on printing, was taken up, viz.: "*Resolved*, That H. A. Tenney be employed to do the incidental printing for this convention, and that a committee of five be appointed by the president to fix a price to be paid for said printing."

Mr. Whiton moved to strike out the words "H. A. Tenney" and insert in lieu thereof "W. W. Wyman," which was disagreed to. And a division having been called for, there were 20 in the affirmative and 43 in the negative.

Mr. Beall moved to amend the resolution by striking out all after "*Resolved*" and inserting as a substitute: "First. That all printing for or by order of this convention shall be done under the direction of a committee of three members to be called 'the committee on printing.'

"Second. That before any such printing be executed the said committee shall issue written proposals for the same and submit them to the several presses in this village, requesting the conductors to submit to them on a certain day the terms upon which they will execute said printing, and accompanying such offer with good and satisfactory security that the same shall be performed according to the proposals submitted.

"Third. That upon the receipt of such terms the printing shall be let to the lowest bidder."

Mr. Prentiss rose to a point of order. He would inquire whether the substitute of the gentleman from Fond Du Lac (Mr. Beall) was in order. In his opinion it was clearly out of order. The parliamentary rule is that a motion to amend a proposition by perfecting it always takes precedence over a motion to strike out the proposition and insert new matter. The motion of the gentleman from Fond du Lac is to strike out the whole resolution and insert his substitute, and is, therefore, palpably out of order so long as there are pending amendments to perfect the original proposition.

The Chair decided the substitute out of order.

Mr. Lovell moved to amend the amendment by striking out all after "*Resolved*" and inserting "That the convention do now proceed to elect a printer to the convention by ballot."

Mr. Lovell was opposed to letting out the printing to the lowest bidder. The printer should be an officer of the convention and under its control, so that in case the work was not done as it should be, or was unnecessarily delayed, or not done at all, a remedy would be

within their reach. He did not understand how this convention could take security of a contractor. To whom was the bond to run? By whom was it to be prosecuted in case of a failure? The contractor might after a short trial conclude that he had a hard bargain and refuse to proceed further. And where would be the remedy? When the convention had finally adjourned, it would no longer have an existence in law or in fact, and of course would have no power to prosecute for a breach of contract.

[Mr. Judd was opposed to the amendment. He was in favor of letting out the printing by contract and would give his reasons for this preference. It was right and just in itself. He was a public servant and entrusted with the public money. No man who is about to build a barn would set a carpenter to work without first having his price. When he has ascertained that and is satisfied with it he concludes a bargain. So he would do in the matter of printing. Who would pay $6.00 for a barrel of flour, when at the next door it can be got for $5.00? Why does the report refer to putting up the printing at auction? No such proposition was made. Proposals are to be made, and what one man bids is not to be known to another. It is consistent and presents a free and untrammeled opportunity for all printers to compete for the work. It does not propose to bolster up one man. It is democratic in its character. He meant, opposed to aristocracy. It is consistent with the genius of government, with the spirit of the age. He referred to the action of Congress for precedent. He did not wish to ruin any mechanic. He wished to pay well for all work done. We ask the printer on what terms he can do the printing. Members do not understand what is right. Printers know and are bound to be honest to themselves and can tell what it can be done for. The one who can do it cheapest should have it. Another reason was that the convention was to lay the foundation for state government; and it was wise to lay a sure, safe, and economical basis to act upon. He said it was right to hold out this principle, not only in words, but in practice. It was much easier to preach than to practice. If it be in accordance with the majority, as he believed it was, it should be adopted. He hoped the question would come up on its own merits. He would vote against every proposition to elect a printer. He would inform the gentleman from Racine that such a vote would not be a test of the friends of Mr. Tenney. He hoped the gentleman would withdraw his motion.—*Tri-Weekly Express*, Dec. 18, 1847.]

Mr. Castleman would vote against the amendment of the gentleman from Racine. The convention had declared, as he believed, in favor of letting out the printing to the lowest bidder; and he wished to see that course adopted by the convention and should therefore vote against any other proposition for disposing of the printing until that one was disposed of.

Mr. Rountree thought the best proposition had not yet been submitted. He would prefer to elect a printer to do the incidental printing, and to let the journal to the lowest bidder.

Mr. Estabrook had listened to the arguments pro and con, with the hope of getting some light on the subject and forming a correct opinion; and he was now in favor of the amendment of the gentleman from Racine. It was according to the usages of all legislative bodies to elect their printers and pay them a fair compensation. Much had been said about getting the printing done at a fair price. If this was what gentlemen were desirous of getting at by letting out the printing by contract, he would refer them to the law calling the convention, which authorized them to elect the necessary officers, and also a printer, and to pay them a fair compensation; and he contended that there was no more necessity or propriety in letting out the printing to the lowest bidder than there was in letting out the other offices in the same way. He thought it was too late now to adopt this method; for if adopted at all it should have been adopted at the outset and all the offices let out to the lowest bidder. He had no doubt that by that course officers might have been procured for one dollar per day. The printing had been compared to building a barn; and it had been argued that it should be let out by contract to the lowest bidder, on the same principle. He thought it was more like "barn-burning" than barn-building. It might be compared to employing a physician. If a man's wife was very sick, he should upon the same principle receive proposals from all the physicians and let out the curing of his wife to the lowest bidder. (Great merriment and cheering.)

Mr. Estabrook went on to explain the reason why the convention was so averse to an election of printer. There were two presses of the same professed politics here; and members were afraid if they voted against either one of them, that one would say something naughty about them. For his own part, he had no such fears. He had an opinion of his own and was ready to express it by his vote if he could get an opportunity.

The question was then put on the adoption of the amendment of Mr. Lovell, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 28, negative 35; for the vote see Appendix I, roll call 5].

Mr. Castleman moved to amend the resolution by striking out all after the word "*Resolved*" and inserting: "That the secretary be and he is hereby instructed to receive sealed proposals from now till half past nine o'clock A.M. on Monday morning next for the incidental printing of this convention, and that he report the same to the convention at their first meeting thereafter: *Provided*, That no proposal shall be reported unless accompanied by security for the performance of the same in the time and manner proposed."

Mr. Beall accepted the amendment as a modification of his motion.

Mr. Lovell moved to amend the amendment by striking out all after "*Resolved*" and inserting: "That the convention proceed to the election by ballot of a printer to do the incidental printing of this convention, and that the journal of the convention be let by contract to the lowest responsible bidder under such regulations as the convention shall provide."

[Mr. Whiton said he thought it was as important to have the journal correctly printed, as the incidental printing of the convention. He did not consider the printer an officer of the convention. The person elected as printer did not do the work himself; he merely made the contract to do it, and the work was done by servants of his. If the convention elected persons to do the printing, they would have to elect a dozen. He was in favor of the proposition of the gentleman from Fond du Lac. Much was said about a press to give tone to public opinion. The object is to sustain a press. We have precedent for it, but it does not follow that it is right. He was glad a different policy had been adopted by Congress. Illinois had adopted a provision in its constitution to let out the printing by contract. He had nothing to do with the quarrels of the press. It made no difference to him who did the printing.—*Tri-Weekly Express*, Dec. 18, 1847.]

Mr. Kilbourn opposed the amendment. He said he came here virtually instructed to oppose all propositions to elect a printer and to go for letting out the printing to the lowest bidder. He was opposed to all monopolies; and he considered the election of a printer the bestowing of a monopoly.

The question was then put on the amendment and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 30, negative 34; for the vote see Appendix I, roll call 6].

Mr. Richardson moved that the convention adjourn, which was disagreed to. Mr. King moved to amend the resolution by striking out the word "incidental," which was disagreed to. And a division having been called for, there were 20 in the affirmative and 26 in the negative.

The question was then put on the adoption of the resolution as amended, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 37, negative 27; for the vote see Appendix I, roll call 7].

Mr. Carter introduced the following resolution, to wit: "*Resolved*, That the president be authorized to invite the Rev. Mr. Read of this village to preach in this room tomorrow morning at eleven o'clock." And the rules having been first suspended for that purpose, said resolution was adopted.

On motion of Mr. Mulford the convention adjourned.

MONDAY, DECEMBER 20, 1847

Prayer by the Rev. Mr. Lord.

The journal of Saturday was read and corrected.

Mr. Rountree presented the certificate of election of the Hon. William H. Kennedy, member-elect from the counties of Sauk and Portage; and on his motion Mr. Kennedy was admitted to his seat.

Mr. Fenton presented the certificate of election of the Hon. George W. Brownell, member-elect from the counties of St. Croix and La Pointe; and on his motion Mr. Brownell was admitted to his seat.

The President announced the appointment of the following standing committees, to wit:

1. On general provisions, comprising preamble; boundaries and admission of the state; suffrage and elective franchise; internal improvements; taxation, finance and public debt; militia; eminent domain and property of the state; bill of rights; and such other provisions as may be referred to them—Messrs. Kilbourn, Rountree, Sanders, Mulford, Reed, Larrabee, Fox, Beall, Carter, Jones, Schœffler, McDowell, Scagel, Reymert, and Brownell.

2. On the executive, legislative, and administrative provisions—Messrs. Lovell, King, Fenton, Latham, Judd, O. Cole, and Turner.

3. On the judiciary—Messrs. Dunn, Whiton, A. G. Cole, Gale, and McClellan.

4. On education and school funds—Messrs. Estabrook, Root, Jackson, Warden, Harvey, Vanderpoel, Fitzgerald, Stedman, and Fagan.

5. On banks, banking, and incorporations—Messrs. Chase, Lakin, Bishop, Castleman, and Wheeler.

6. On schedule and other miscellaneous provisions—Messrs. Prentiss, Lewis, Colley, Doran, Featherstonhaugh, Ward, and Cotton.

The President presented the following communication from the secretary of the convention, to wit:

CONVENTION CHAMBER
MADISON, December 20, 1847

The undersigned begs leave to report that in accordance with a resolution adopted by the convention on the eighteenth instant he addressed letters to the several printers resident in Madison, enclosing a copy of said resolution, and that he has received the following proposals to do the incidental printing of this body, accompanied by the security required.

Respectfully submitted,

THOS. MCHUGH, Sec'y.

Express Office

MADISON, December 20, 1847

T. MCHUGH Esq.

Sir: In accordance with a resolution adopted in the convention on the eighteenth instant I make the following proposals for doing the incidental printing of the constitutional convention:

For composition per 1,000 ems, forty cents

For presswork per token of 250 impressions or under of one form, forty cents
Paper furnished at cost

W. W. WYMAN

We, the undersigned, will hold ourselves responsible for the faithful performance on the part of Mr. W. W. Wyman of any contract which he may make for doing the incidental printing of the constitutional convention now in session at this place.

P. W. MATTS
WM. M. PYNCHEON
A. BOYD

Dated MADISON, December 20, 1847

PROPOSALS FOR DOING THE INCIDENTAL PRINTING FOR THE CONVENTION TO FORM A CONSTITUTION FOR THE STATE OF WISCONSIN

Argus Office
MADISON, December 20, 1847

We, the undersigned, proprietors of the *Wisconsin Argus* printing establishment, hereby propose and agree to do the incidental printing of this convention for the sum of one cent.

H. A. TENNEY
JOHN Y. SMITH
BENJAMIN HOLT

The undersigned guarantee that Messrs. Tenney, Smith, and Holt, if their proposal for doing the incidental printing of this convention be accepted, shall perform the work in a good, expeditious, and [acceptable] manner, and shall enter into any other or further bond or obligation with good and sufficient sureties, to perform the service proposed if the convention shall so direct.

SIMEON MILLS
ELISHA BURDICK
GEO. P. DELAPLAINE
JOHN CATLIN
DANIEL B. SNEEDEN
JAMES M. SHIELDS
DANIEL BAXTER
E. B. DEAN, JR.
J. H. LEWIS

MADISON, December 20, 1847

PROPOSALS FOR DOING THE INCIDENTAL PRINTING FOR THE CONVENTION

We, the undersigned, hereby agree to do the incidental printing of the convention during the present session for one-half of the sum it has already cost the people of the territory in the discussion had on that subject. The same to be ascertained by a committee appointed by the convention.

GEORGE THOMPSON
LAWRENCE BARROWS

We hereby guarantee that the above bid, if accepted, shall be faithfully executed.

WM. N. SEYMOUR
CHAS. HOLT
N. W. DEAN
J. D. RUGGLES

MADISON, December 20, 1847

To the Constitutional Convention

GENTLEMEN: In accordance with a resolution passed by your honorable body December 18, 1847 I propose to do the incidental printing for your present session at the rates of forty cents per thousand ems for plain composition, and eighty cents per thousand ems for rule and figure work, and forty cents per token for presswork.

BERIAH BROWN

MADISON, W. T., December 20, 1847.

We, the undersigned, hereby agree that if the above proposition of Beriah Brown is accepted by the constitutional convention, he will faithfully perform the work above specified and give such bond or security as the convention may require.

ABEL RASDALL
THOS. W. SUTHERLAND

MADISON, W. T. December 20, 1847.

To the Hon. the Constitutional Convention of Wisconsin Territory

GENTLEMEN: The undersigned practical printers, residents of the village of Madison, Wisconsin, in compliance with a resolution of your honorable body passed on the eighteenth instant in relation to the incidental printing of the convention, beg leave to submit through your secretary the following proposition, and ask for it your favorable consideration:

1. Composition. Plain composition at 29 cents per thousand ems. Rule and figure work at 58 cents per thousand ems.

2. Presswork. [All kinds of] presswork at 29 cents per token.

We propose to do the incidental printing of the convention at the above rates in a workmanlike manner.

In further compliance with the said resolution of the convention we submit the names of the following gentlemen as security for the prompt and faithful performance of the contract herein contemplated to be made in manner becoming and hereunto appended.

WILLIAM WELCH
R. A. BIRD

MADISON, December 20, 1847.

We, and each of us, do hereby bind ourselves, that if the above bid of W. Welch and R. Bird is accepted by the convention, the incidental printing of said convention shall be done in manner as proposed, or that at such time a bond shall be executed conditioned for the faithful performance of said contract in such manner as the convention may direct.

Witness our hands this twentieth day of December, A. D. 1847.

JOHN D. WELCH
T. W. HALL
CHESTER BUSHNELL
J. M. GRIFFIN
WM. H. YAGER

Mr. Doran introduced the following resolutions, which were read, to wit: "*Resolved,* That the proposals for printing which have been submitted to the secretary in accordance with a resolution of the convention be referred, unopened, to a committee of three members, to be appointed in the usual way, and that said committee be authorized to open said proposals, and to accept of the one which they shall ascertain to be the lowest in price.

"*Resolved,* That such accepted proposal shall be put on file with the secretary and shall be recognized as a contract for the faithful and prompt

performance of the services thereby proposed to be rendered: *Provided*, however, That the convention reserves to itself the right to discharge said party at any time, in case the services shall not be faithfully [and promptly] performed.

"*Resolved*, That it shall also be the duty of said committee or a majority thereof to examine daily or as often as they may deem necessary the accounts of said printer, as also the amount of printing actually done and returned, as the work progresses; and to keep a book or books in which they shall enter all necessary particulars with their comparisons and calculations together with all data on which their calculations may be based. And that it shall be the duty of the printer whose proposal they may accept to afford either by himself or foreman all due facility for carrying out the objects of this resolution."

Mr. Beall moved that the rules be suspended for the consideration of said resolution now, which was disagreed to. And a division having been called for, there were 28 in the affirmative and 24 in the negative. And pending the question on the adoption of the same, Mr. Kilbourn moved to lay the communication from the secretary on the table, which was disagreed to.

Mr. Beall introduced the following resolution, to wit: "*Resolved*, that (in pursuance of the resolution heretofore adopted in regard to the incidental printing) H. A. Tenney, John Y. Smith, and Benjamin Holt, having offered the lowest bid for the same, be and are hereby appointed to do the incidental printing of this convention: *Provided*, They shall file security for the performance of the same to the satisfaction of the president." And the rule having been first suspended for that purpose, said resolution was adopted.

Mr. Reed introduced the following resolution, to wit: "*Resolved*, That the secretary be authorized to employ some competent person to report correctly the proceedings and debates of this convention."

Mr. Reed remarked that many inaccuracies had crept into the reports published in the papers of this place. His object in offering the resolution was to secure the services of a reporter who would furnish a sketch of the debates which could be relied upon hereafter as entirely accurate. Such reports he was satisfied could not be obtained unless they were made on the authority and under the control and supervision of the members of the convention.

Mr. Castleman inquired if it was contemplated by the gentleman to publish these reports in the papers as the convention progressed, or in book form hereafter.

Mr. Reed was understood to reply that his design was that the work should be done hereafter.

Mr. Gale moved to amend said resolution by striking out the word "some" and inserting "two," and also by adding "and furnish a copy of such reports to each of the papers in this village for publication."

Mr. Gale explained that he had offered his amendment from a conviction that if the resolution was adopted, one reporter would not be sufficient to do the work. He did not know how many persons there were in Madison who could write in stenographic characters. Before any action on the question was taken, however, it ought to be ascertained. He could see no good reason either why, if such reports were made, they should not be furnished to the papers at the seat of government.

Mr. Chase remarked that a great deal had been said about economy since the commencement of the session, and he thought it was high time the talk on that subject ceased and the convention took some action to secure it. The project of employing reporters as contemplated in his view was not only inexpedient and the object wholly unattainable, but was a waste of the money of the people, which that body had no right to devote to any such purpose.

Mr. King did not think the expense of such reports entitled to any great consideration. The saving effected on the incidental printing was far more than sufficient to cover it. The only question was as to the propriety of the measure, of which he entertained no doubt. As to the inaccuracies of the reporters to which allusion had been made, he thought it quite probable that mistakes occasionally occurred. It would be strange indeed if they did not in the complicated proceedings of so large a body. But he would say of the reporters that they had discharged their laborious duties in a manner highly creditable to themselves, and he was confident that if desired none better could readily be obtained.

Mr. Castleman moved that the further consideration of said resolution and amendment be postponed until tomorrow morning, which was agreed to.

Mr. Richardson introduced the following resolution, which was read, to wit: "*Resolved*, That the committee to whom miscellaneous provisions are referred be instructed to consider and report whether or not it is expedient to incorporate a clause in the constitution exempting real estate from taxation by the owner or owners thereof, paying to the proper authorities a sum the interest of which it would be fair to presume would be an equivalent for the taxes upon such real estate; and, if in their opinion the incorporation of such clause be expedient, that they be directed to report a proper article for that purpose."

Mr. Latham introduced the following resolution, to wit: "*Resolved*, That each member of this convention be furnished with twenty-five numbers weekly of any newspaper published in this territory, in addition to the number now provided by the convention."

Mr. Chase thought the action of the convention on the subject of economy was like the pendulum of a clock. It had vibrated to the extreme at the outset in regard to printing, and there was danger that it would go equally as far on the other side. He was entirely opposed to the resolution.

Mr. Jackson said that he could not vote for the resolution. In addition to the cost of the papers the expense of postage would be large. The laws required prepayment at three cents each. He was informed by the postmaster that 700 newspapers were mailed last evening. The postage on these would amount to $21, at this rate. The postage on papers now sent by members of this body will amount to $20 or $25 per day; and he thought the expense that would be incurred by the passage of this resolution would not be justified by his constituents.

Mr. Estabrook regarded the expense as a matter of very small moment in comparison with the people being kept advised of the proceedings of this body. The circulation of papers was the only medium within the reach of members of bringing their doings to the knowledge of their constituents. The constitution itself, when completed, would be put in their possession by the same means; and in the incipient stages of its formation it was of the highest moment that they should be kept constantly advised of the doings of their delegates in order, if they thought proper, to give them the benefit of their instructions. The number at present allowed was not half sufficient, and he should therefore most heartily support the measure.

Mr. Beall concurred in the opinion of the gentleman from Walworth. The number of papers furnished members should be either large or very small, as it would be likely to make friends or enemies for each member in proportion as he was enabled to send them to many or few individuals. The time from the adjournment of the convention to the vote upon the constitution would doubtless be brief; and it was a matter of duty, therefore, to circulate information of their proceedings as widely as possible.

Mr. Estabrook suggested to members the propriety of having their papers mailed from the office of publication. They would thus avoid two-thirds of the enormous postage at present charged.

Mr. King thought it a poor reason to advance here, that the enlightened people of Wisconsin would complain at the expense of a few extra papers, when the object of those papers was directly to

benefit themselves. Such arguments he regarded as entitled to but little weight. The papers were necessary; and he would consequently vote to have them furnished.

The rules having been first suspended for that purpose, the question was then put on the adoption of the resolution, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 45, negative 22; for the vote see Appendix I, roll call 8].

Mr. Sanders introduced the following resolution, to wit: "*Resolved*, That a committee of three be appointed to ascertain the incidental expenses of the convention." Mr. Lovell moved to amend the same by striking out the word "three" and inserting in lieu thereof the word "five" and also adding "and a committee of five on engrossment"; which was accepted by the mover as a modification of the original resolution. The rules having first been suspended for that purpose, the resolution as modified was adopted.

Mr. Case introduced the following resolution, which was read, to wit: "*Resolved*, That it be referred to the committee having in charge the subject of suffrage and elective franchise to inquire into the expediency of requiring all voters to vote in the town or district where they reside for all elective officers."

Mr. Larrabee introduced the following resolution, which was read, to wit: "*Resolved*, That the committee on executive, legislative, and administrative provisions be instructed to inquire into the expediency of incorporating into the constitution a section embracing the following provisions: first, that the legislature shall provide by law that the fuel and stationery furnished for the use of the state, the copying, printing, binding, and distributing the laws and journals and all other printing ordered by the legislature, shall be let by contract to the lowest responsible bidder, and that the legislature may fix a maximum price; second, that no member of the legislature or other officer of state shall be interested, either directly or indirectly, in any such contract."

Mr. A. G. Cole introduced the following resolution, to wit: "*Resolved*, That 150 copies of the rules adopted for the government of the convention be printed in pamphlet form, together with a list of the standing committees and the names of the members of the convention with their residence and boarding house." And the rules having been first suspended for that purpose, the said resolution was adopted.

Mr. Lakin introduced No. 6, resolution to secure the rights of litigants, which was read, to wit: "*Resolved*, That the committee on general provisions be requested to inquire into the expediency, propriety and necessity of incorporating the following provisions and articles or similar ones into the bill of rights, to be reported to this convention, to wit:

" 'Section 1. The right of trial by jury shall never be abridged or in the least degree impaired.

" 'Section 2. The prerogative of juries shall forever be protected and shall be kept separate and distinct from that of the judges.

" 'Section 3. The attorneys on either side of a cause may reduce to writ-

ing such points and principles of law as they may claim to be applicable to the case and may request the judge to give them to the jury.

" 'Section 4. Such points and principles so reduced to writing, as the judge shall approve, it shall be his duty to write opposite, in the margin, the word "given"; and such points and principles as he shall disapprove, he shall write opposite, in the margin, "refused," without modifying or explaining such points in any manner; which points and principles so prepared shall be filed, and shall be deemed a part of the record, and may be referred to by the jury. Except in this manner, shall no instructions, charge, or argument whatever be given or made by the judge, unless the parties litigant or their attorneys in open court shall request the judge to make and give a charge in his own way.' "

[Mr. Gifford introduced the following resolution, which was read, to wit: "*Resolved*, That the legislature shall have no power to create, authorize, or incorporate, in any manner or form, any bank or other institution or corporation having any banking power or privilege whatever, until the question 'bank or no bank' shall be submitted to the legal voters of this territory; and if said legal voters shall decide in favor of banking, then the legislature shall have power to make a general banking law under the following restrictions, to wit:

"The legislature shall provide by law for the registry of all bills or other evidences of debt put in circulation as money and shall receive ample security for the same in public stock or real estate; and no suspension of specie payment shall ever be allowed by any bank.

"The legislature shall provide commissioners to examine all banks or other institutions that may be created under said general banking law once every three months and report the same to the register.

"The legislature shall provide by law that all the property, both personal and real, belonging to any stockholder, shall be liable to the full extent of all the bills issued by the bank in which he is a stockholder."]

The communication from the secretary of the territory was taken up, when Mr. Gale moved that the same be printed, which was agreed to.

[Mr. Gale moved that 100 copies of the same be printed. Mr. Reed would inquire what was the object of having this matter printed. He presumed every member knew the standing of the vote on that question. Mr. Gale thought it was important to have it printed and laid on the members' tables; and as the cost of printing was so trifling, he hoped it would be done. The motion prevailed.—*Tri-Weekly Express*, Dec. 21, 1847.]

Mr. Kilbourn moved that No. 2, resolution relative to the judiciary; No. 3, resolution relative to the legislature; and No. 4, resolution relative to banks and banking, be taken up, which was agreed to. And a division having been called for, there were 28 in the affirmative and 15 in the negative.

The convention then resolved itself into committee of the whole for the consideration of said resolutions, Mr. Lovell in the chair.

[The second resolution was taken up and amended so as to provide for its reference to the judiciary committee and instructing them to inquire into the expediency of reporting on the features it contains and provides for the election of justices of the peace and for the organization of such other municipal or other courts as the legislature may deem necessary. The following resolution was added: *"Resolved,* That the committee on the judiciary be instructed to inquire into the expediency of the election of the judges of the supreme court by a joint vote of both houses of the legislature." The resolutions as amended were then adopted in committee.

The third resolution was taken up and several amendments were proposed, when on motion of Mr. Gale the committee rose and reported progress and asked leave to sit again.—*Tri-Weekly Express,* Dec. 21, 1847.]

And after some time spent therein the committee rose and by their chairman reported progress thereon and asked leave to sit again. Leave was granted.

On motion of Mr. Fenton the convention adjourned.

TUESDAY, DECEMBER 21, 1847

Prayer by the Rev. Mr. Raymond.

The journal of yesterday was read.

The President announced the appointment of the following additional standing committees, to wit:

On incidental expenses—Messrs. Fowler, Case, Secor, Nichols, and Hollenbeck.

On engrossment—Messrs. Richardson, Kinne, Larkin, Foot, and Pentony.

Mr. King presented the following petition from the employed printers of Madison, in relation to giving public offices to the lowest bidder.

To the Constitutional Convention of the Territory of Wisconsin: The undersigned, employed printers of the village of Madison, being informed of the action of your honorable body in letting out to the lowest bidder the printing which may be within your control, and noticing a proposition now pending to place in the constitution a clause which shall make a similar disposition of all future printing, and properly appreciating the enlightened "progression" which has dictated such action, and desirous that the "true democratical principle" thus applied to them should be extended to others, respectfully petition that an additional clause be inserted in the constitution now in progress of formation by your honorable body letting out to the lowest bidder all the offices under the new state government, of whatever nature or kind, and all services of whatever description or character.

Without arguing the unfairness of bringing the interests of labor alone under the retrenching knife (and which is doubtless foreign to the intention of any member of your honorable body) your memorialists ask leave to submit some considerations in favor of an unlimited application of the "great principle" involved in the act under review:

First. It would reduce in a very material degree all the apparent expenses of government; and as "cheapness" seems to be the sole object nothing else can so effectually accomplish this end. There are doubtless men in every profession whose wants require employment at any price; and no good reason exists why the state should not avail itself of the necessities of its subjects to secure the great desideratum of economy. Should, however, this mode of employing public servants degenerate into parsimony, of course the state is in no wise responsible. Men are free agents and should all be above the force of circumstances or dictates of avarice and need not bid unless they choose.

Second. It will open all the public offices to the competition of every individual and thus practically exemplify the theory of our republican government of equal rights and equal privileges. It may be true that the state would not always obtain the requisite capacity and qualifications; but this your memorialists deem a secondary consideration in pursuit of the "great principle."

Third. It will free the whole government in all its departments from the baneful influence of party and party organization, and the minor questions of free trade, tariff, banks, corporations, or exclusive privileges will be absorbed in the weightier matter of cheap work! The fact, too, that the many unpleasant references to past history or character which now disturb our political contests would be entirely obviated may not inappropriately be taken into account.

Fourth. In this general breaking up of all party organization it would prevent the incessant struggles for places of good profit and small services; and should it result in allowing politicians to dodge responsibility and avoid the enmity of disappointed applicants and thereby retain their good will for the subsequent advancement of selfish projects, your memorialists entertain the hope that such an effect will not be deemed its least recommendation to favor.

Fifth. It will not only lessen the expenses of the government, but diminish those of the people, particularly in the matter of legal fees and legal services. There is no propriety in paying high prices for justice when it may be procured for a less cost from those whom necessity or competition may compel to labor for less than statute rates.

These are some of the considerations of a general character which have induced your memorialists to prefer their petition. They cannot believe that your honorable body will leave itself in the position to be charged with a willingness to sacrifice the mechanic, whose influence may be supposed unworthy of regard, while it leaves untouched the high salaries and large perquisites of political and legal station, from a supposed well-timed heed to future assistance in time of need. Neither do they believe your honorable body are unwilling to apply to themselves the rule prescribed for others.

Personally, your memorialists wish the adoption of their petition from an apprehension that the action already had and contemplated is to lessen their means of daily living, which are already scant enough; and actuated by the hope that other sources of present employment will be opened to them they further ask that if in the power of your honorable body the offices now attached to it be declared vacant, and then let out to the lowest bidder, for which we pledge ourselves to make offers at far less rates than are likely otherwise to be paid.

CHARLES HOLT
W. F. CHANEY
LAWRENCE BARROWS
D. THOMAS DICKSON
GEORGE THOMPSON
DANIEL MALLO
W. G. CONICK
CHARLES T. WAKELEY
R. A. BIRD
C. B. SMITH
C. C. COFFINBERRY

MADISON, December 21, 1847.

The secretary proceeded to read the memorial, and when he had nearly completed a paragraph, Mr. Reed moved that it be laid on the table and the further reading dispensed with.

Mr. King said he really hoped the motion would not prevail. The right of petition was guaranteed to all; and certainly members could form no opinion of the objects of the petition or the desire of the petitioners, unless they heard it read. If they then deemed it discourteous or improper, it was their province to dispose of it in such manner as was most agreeable to them. But the motion pending he regarded as a very summary method of proceeding and not warranted by the circumstances.

Mr. Judd moved as a substitute for the motion that the petition be rejected.

Mr. Featherstonhaugh hoped the substitute would prevail. The petition was evidently intended to cast ridicule on their proceed-

ings, and he did not think the convention should sit there and allow themselves to be insulted.

Mr. Gale moved as an amendment that the petition be referred back to the petitioners. The President said the question then pending was to lay the petition on the table and to dispense with the further reading. Mr. Gale hoped the motion to refer back would prevail. Mr. Beall inquired if the petition would go upon the journal. The President remarked that it was not customary to enter petitions on the journal. The secretary was required to make a minute that such a petition had been received and what disposition was made of it. He presumed that no further notice was necessary.

Mr. Judd inquired if his motion to reject was not in order. The President said that if seconded, it was.

Mr. Gifford desired to know on what ground petitions were to be rejected from this body without even a hearing. If this one was offensive, then it was proper that it should be laid upon the table; but how could members know whether it was or was not, if they knew nothing of its contents? He protested most solemnly against so gross an outrage on the right of petition. Every man had a right to be heard even in this august body; and so long as the request was preferred in respectful language he could not see the slightest reason for the arbitrary and unjust motion to reject.

The full reading of the petition having been called for, the President directed the secretary to read the balance, which was done.

And the question having been put on the motion to reject, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 47, negative 20; for the vote see Appendix I, roll call 9].

Mr. Lovell, from the committee on executive, legislative, and administrative provisions, made the following report, to wit:

"The committee on the executive, legislative, and administrative provisions of the constitution respectfully submit the accompanying article on executive for the consideration of the convention.

F. S. Lovell
Rufus King
D. G. Fenton
Hollis Latham
Stoddard Judd
O. Cole
H. G. Turner

EXECUTIVE

"Section 1. The executive power shall be vested in a governor, who shall hold his office for two years. A lieutenant governor shall be elected at the same time and for the same term.

"Section 2. No person except a citizen of the United States and a qualified elector of this state shall be eligible to the office of governor or lieutenant governor.

"Section 3. The governor and lieutenant governor shall be elected at the times and places of choosing members of the legislature. The persons respectively having the highest number of votes for governor and lieutenant governor shall be elected, but in case two or more shall have an equal and the highest number of votes for governor or lieutenant governor, the two houses of the legislature at its next annual session shall forthwith by joint ballot choose one of the persons so having an equal and the highest number of votes for governor or lieutenant governor. The returns of election for governor and lieutenant governor shall be made in such manner as shall be prescribed by law.

"Section 4. The governor shall be commander-in-chief of the military and naval forces of the state. He shall have the power to convene the legislature on extraordinary occasions. He shall communicate by message to the legislature at every session the condition of the state and recommend such matters to them for their consideration as he shall judge expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature and shall take care that the laws are faithfully executed.

"Section 5. The governor shall reside at the seat of government during his continuance in office, and receive as a compensation for his services annually the sum of $1,500.

"Section 6. The governor shall have the power to grant reprieves, commutations, and pardons, after conviction, for all offenses except treason and impeachment upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason he shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the legislature each case of reprieve, commutation, or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon, or reprieve, with his reasons for granting the same.

"Section 7. In case of the impeachment of the governor, or his removal from office, death, inability from mental or physical disease, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor for the residue of the term or until the governor, absent or impeached, shall have returned or the disability shall cease. But when the governor shall with the consent of the legislature be out of the state in

time of war, at the head of the military force thereof, he shall continue commander-in-chief of the military force of the state.

"Section 8. The lieutenant governor shall be president of the senate but shall have only a casting vote therein. If during a vacancy of the office of governor the lieutenant governor shall be impeached, displaced, resign, die, or from mental or physical disease become incapable of performing the duties of his office, or be absent from the state, the secretary of state shall act as governor until the vacancy shall be filled or the inability shall cease.

"Section 9. The lieutenant governor shall receive double the per diem allowance of members of the senate for every day's attendance as president of the senate and the same mileage as shall be allowed to members of the legislature.

"Section 10. Every bill which shall have passed the legislature shall before it becomes a law be presented to the governor; if he approve, he shall sign it; but if not, he shall return it with his objections to that house in which it shall have originated, who shall enter the objections at large upon their journal and proceed to reconsider it. If after such reconsideration two-thirds of the members present shall agree to pass the bill, it shall be sent together with the objections to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present it shall become a law; but in all cases the votes of both houses shall be determined by yeas and nays; and the names of the members voting for or against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law unless the legislature shall by their adjournment prevent its return; in which case it shall not be a law."

The said article was then read the first and second times, and on motion of Mr. Lovell was ordered to be printed.

Mr. Lewis introduced the following resolution, which was read, to wit: "*Resolved,* That every man shall have the right to petition the legislature for the redress of grievances in an orderly manner."

Mr. Case introduced the following resolution, which was read, to wit: "*Resolved,* That the committee on general provisions be instructed to inquire into the propriety and expediency of making the secretary of state ex officio superintendent of public instruction."

Mr. King introduced the following resolution, which was read, to wit: "*Resolved,* That the committee on general provisions be instructed to inquire into the expediency of incorporating into the bill of rights an article prohibiting all magistrates or other officers holding office by virtue of any law of this state from issuing any process or rendering any official assistance for the arrest or imprisonment of any person claimed as a fugitive from slavery."

Mr. Richardson introduced the following resolution, which was read, to wit: "*Resolved,* That the committee on education and school funds be instructed to inquire into the expediency of incorporating a clause into the constitution, making it imperative on the legislature to provide the necessary

means by taxation or otherwise for placing a common school education within the reach of all the children of the state."

Mr. Folts introduced the following resolution, which was read, to wit: "*Resolved,* That the secretary of the territory be requested to furnish this convention with a certified abstract of the number of inhabitants of each county, by towns and precincts, of the late census, as soon as full returns of the same shall have been received at his office."

The resolution introduced by Mr. Doran yesterday, relative to the printing, was then taken up, when Mr. Doran by leave withdrew the same.

The resolution introduced by Mr. Reed yesterday, relative to the employment of a reporter, was then taken up. And the pending question being on the amendment proposed by Mr. Gale.

Mr. Reed said he was opposed to the amendment. The object of the resolution was to secure to the people full and accurate reports of the doings of this body for reference hereafter. But he saw no propriety in voting away the money of the people to employ reporters for the benefit of the press. Mr. Harvey had understood the object of the resolution to be to get correct reports. If such were obtained they certainly were the ones most proper to have published in the newspapers. Without such a proviso he could not see the propriety of having them made at all. Mr. Reed replied that the present reports published in the papers were full of inaccuracies. This, he apprehended, was the result of carelessness. Resolutions had in some cases been credited to persons who had not offered them, points of order had been misstated, and the debates were at best but meagre and unsatisfactory sketches. In the New York convention they had been prepared with great care by the best reporters in the country. Such reports ought to be made here, as it was of great consequence that the proceedings should not only be accurately taken, but be preserved in a proper form for reference. To secure this he had offered his resolution and trusted it would prevail.

Mr. Harvey stated that the same objections were raised to the reports in the New York convention as here. Notwithstanding all possible pains had been taken to secure the best reporters in the Union, a resolution was offered in that body of the same purport as that introduced here. The great difficulty of securing entire accuracy would therefore be apparent. He thought the reporters now employed by the presses here as good as could be obtained in the place. They were directly responsible for them; and their interests and pride all concurred in urging them to make the most strenuous

efforts to lay before the public the most perfect reports in their power. An officer of this body, however, would have no such stimulus to spur him on; and we have no guarantee that his employment would secure better reports than are at present obtained. Much time had already been wasted on the subject; and he hoped the question would speedily be disposed of.

Mr. Reed did not wish to be understood as objecting to the character or ability of the present reporters. But they had not time to do full justice to them. At best they could make but a brief journal of the proceedings; whereas if a reporter was employed, the convention would have their procedings preserved in a complete and reliable form.

The question having been put, it was decided in the negative. Mr. Case moved that the resolution be referred to the committee on incidental expenses, which was disagreed to.

The question then recurring on its adoption, Mr. Doran said he was opposed to the resolution inasmuch as he felt that the object it contemplated could not be obtained. The experience of every public body had shown that no such reports could be made as would prove satisfactory to all its members. The reporters for the New York convention were esteemed the best in the Union. Yet with all their experience, education, and tact they were unable to satisfy the members of that body. The same objection was raised there as here; and for himself he was free to declare his surprise at the general accuracy of the reports of proceedings already made in this body. In the confusion attendant upon the sitting of a large body it was impossible to make verbatim reports. It was customary in some of the most extensive establishments to employ a corps of reporters so numerous that they changed every half-hour, and still much escaped them. The most that could be expected was that the substance of the debates should be given; and this he believed was all the people either expected or desired. He thought the reporters in Madison entitled to all praise for the manner in which they had discharged their very laborious and difficult task.

Mr. Gale said he had conversed with a gentleman, the only one in the place, as he was informed, who could write shorthand, and had learned that one shorthand writer with an assistant who need not write shorthand would be sufficient to keep full and accurate reports of the proceedings of the convention. He thought the con-

vention need not be at any expense in the publication of such reports, as the newspaper publishers would be pleased with the opportunity of copying them for the press; and he had no doubt but that private individuals would be ready to publish such proceedings in book form.

The utility of such reports could not be questioned. They were laboring for posterity; and their proceedings were to become a part of the history of the new state of Wisconsin; and he was anxious that a correct history might be kept by the authority of the convention.

Mr. Fox hoped this matter would be dismissed. The proceedings of the convention would mostly appear on the journal, which would be published; and he thought that record sufficient. He did not desire to trouble members with his Irish brogue—but really he thought the debate had gone too far.

The question was then put on the adoption of the resolution, and was decided in the negative. So the said resolution was rejected.

The resolution introduced by Mr. Richardson yesterday, relative to the exemption of real estate from taxation, was taken up. And the question having been put on the adoption of said resolution, it was decided in the negative.

The resolution introduced by Mr. Lakin yesterday, relative to the rights of litigants, was then taken up.

Mr. Lovell said he hoped the resolution would be referred to the committee as desired. It was due to every resolution and proposition not frivolous to be referred, in order that the individual opinions of members might be known to the committee.

Mr. Lakin did not propose to give his views at length on the subject. He felt no anxiety as to the fate of the resolution. It embodied his own personal views, and he would be glad to have it referred. Should the report of the committee then be adverse, he would give his reasons at length. He had called for the yeas and nays, so that every member might show his vote. He was always willing to do this himself, so that the journal might show in black and white what position he had occupied on every subject that arose.

Mr. Castleman said he had voted against the resolution and would do so again, not because he was opposed to the propositions contained in the resolution, but because he was opposed to and would on all occasions vote against introducing legislative details into the constitution, as this resolution seemed to him to do.

Mr. Doran was opposed to the resolution on the ground that it was superfluous. He saw no good reason for its adoption, and although not opposed to much of the resolution itself, he would still vote against it.

Mr. Beall would vote for the resolution. It shadowed forth the first principles of a legal reform he was in favor of. This was sufficient to determine his vote.

The question was then put upon the adoption of the same, and it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 57, negative 11; for the vote see Appendix I, roll call 10].

Mr. Harvey introduced the following resolution, to wit: "*Resolved,* That the secretary of this convention be directed to procure the printing of the journal of each day's proceedings of the convention, and that a copy of the same be laid upon the desk of each member."

[Mr. Chase thought it was unnecessary to have the journal printed in this form. The papers were published tri-weekly and he thought this was as often as was necessary; and as the printing was done very cheap, he was not disposed to impose too much printing upon them. Mr. Harvey thought it was important for the members to have the journal before them as they could have the resolutions introduced before them when they came up for action. The resolution was adopted. —*Tri-Weekly Express,* Dec. 21, 1847].

And the rules having been first suspended for that purpose, the said resolution was adopted.

The convention then resolved itself into committee of the whole for the further consideration of No. 2, resolution relative to the judiciary; No. 3, resolution relative to the legislature; and No. 4, resolution relative to banks and banking, Mr. Judd in the chair.

Several amendments were made to resolutions No. 2 and 3.

Resolution No. 4, introduced by Mr. Kilbourn, on banks and banking being under consideration, Mr. Gale moved to strike out the resolution and insert the following: "*Resolved,* That, in the opinion of this convention, the whole subject of banks and banking should be left to the control of the legislature."

Mr. Gale said he was aware that there was a variety of views on the subject of banking. He was for leaving the matter to the legislature; he thought the people would be less likely to complain and the constitution more likely to be adopted. The incorporation of

banks was strictly the business of legislation and should not be tied up in the fundamental law of the state. The world was progressive; and what might be necessary or expedient today might not be next year, or in a few years. And as the legislature was the tribunal to be created by the constitution for the express purpose of providing laws necessary for future generations, he thought this subject should be left to its control. It is urged that banks are not necessary for any community or state and consequently should be forever prohibited. But he thought that was assuming that ourselves were the embodiment of the wisdom of all ages past and to come. He said that one of the strongest arguments that was urged against leaving this subject to the legislature was that the members were liable to be bought up by moneyed capitalists. This he thought should have no weight with anyone of common sense, for if the argument was good it would apply with equal force to a thousand other subjects which no one anticipated would be or wished to have incorporated into the constitution.

Mr. Castleman moved to amend the amendment by adding the following proviso: *"Provided,* That no act passed by the legislature allowing banking privileges shall become a law unless approved by a vote of the people"; which was accepted as a modification of the amendment. The question was then taken on the adoption of the amendment, and it was rejected.

Several other amendments were proposed.

The committee rose and by their chairman reported the same back to the convention with sundry amendments thereto.

The question being on concurring in the amendments to resolution No. 2, a division of the question was called for, and the first, second, third, and fourth amendments were then concurred in.

The question was then put on concurring in the fifth amendment, which was to amend by adding as follows, to wit: *"Resolved,* That the committee on the judiciary be instructed to inquire into the expediency of the election of the judges of the supreme court by a joint vote of both houses of the legislature," and was decided in the negative. And a division having been called for, there were 6 in the affirmative, negatives not counted. The resolution as amended was then adopted.

The question was then put on concurring in the amendments of the committee of the whole to resolution No. 3. A division of the question was called for. The first and second amendments were then concurred in. The question was then put on concurring in the third amendment, which was to strike out the words "forty-five" and "eighty" wherever they occur, and was decided in the negative. The resolution as amended was then adopted.

The amendments of the committee of the whole to resolution No. 4 were then severally concurred in, and the resolution as amended was adopted.

Mr. Fenton introduced the following resolution, which was read, to wit: "*Resolved*, That the committee on boundaries be instructed to inquire into the expediency of reporting an ordinance on that subject, containing the following provisions, viz.: 'Section 1. It is hereby ordained and declared that the state of Wisconsin doth consent to and accept of the boundaries prescribed in the act of Congress entitled "An Act to enable the people of Wisconsin Territory to form a constitution and state government, and for the admission of such state into the Union," approved August 6, 1846: *Provided*, however, That the following alteration of the aforesaid boundary be and hereby is proposed to the Congress of the United States as the preference of the state of Wisconsin; and if the same shall be assented and agreed to by the Congress of the United States, then the same shall be and forever remain a part of said boundary [of the territorial limits of the state of Wisconsin, viz.: Leaving the aforesaid boundary] line at the foot of the rapids of the St. Louis River; thence in a direct line bearing southwest to the mouth of Rum River, where the same empties into the Mississippi River; [thence down the main channel of the said Mississippi river] as prescribed in the aforesaid boundary.'"

And the rules having been first suspended for that purpose, the resolution was adopted.

On motion of Mr. Kilbourn the convention adjourned.

WEDNESDAY, December 22, 1847

Prayer by the Rev. Mr. Penman.

The journal of yesterday was read.

Mr. Judd presented the certificate of election of Mr. Larrabee from the county of Dodge, which was placed on file.

Mr. Lovell, from the committee on executive, legislative, and administrative provisions, made the following report, to wit:

"The committee on the executive, administrative, and legislative provisions of the constitution respectfully submit for the consideration of the convention the accompanying article.

F. S. LOVELL
RUFUS KING
D. G. FENTON
HOLLIS LATHAM
STODDARD JUDD
O. COLE
H. G. TURNER

ADMINISTRATIVE

"Section 1. There shall be elected at the times and places of choosing the governor, a secretary of state (who shall ex officio be the auditor), a treasurer, and an attorney general, who shall severally hold their offices for the term of two years.

"Section 2. The secretary of state shall keep a fair record of the acts of the legislative and executive departments of the state, and shall when required lay the same and all matters relative thereto before either branch of the legislature; and shall perform such other duties as shall be assigned him by law. He shall receive as a compensation for his services, yearly, such sum as shall be provided by law and shall keep his office at the seat of government.

"Section 3. The powers, duties, and compensation of the treasurer and attorney general shall be prescribed by law.

"Section 4. Sheriffs, coroners, and district attorneys shall be chosen by the electors of the respective counties once in every two years and as often as vacancies shall happen. Sheriffs shall hold no other office and shall be ineligible for the next two years after the termination of their offices. They may be required by law to renew their security from time to time, and in default of giving such new security their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff. The governor may remove any officer in this section mentioned within the term for which he shall have been elected, giving to such officer a copy of the charges against him and an opportunity of being heard in his defense."

The said article was read the first and second times and ordered printed.

Mr. Kilbourn, from the committee on general provisions, reported No. 3, article on preamble, as follows:

PREAMBLE

"We, the people of Wisconsin, grateful to Almighty God for our freedom, in order to secure its blessings, form a more perfect government, insure domestic tranquillity, and promote the general welfare, do establish this constitution."

[And also article on declaration of rights:

DECLARATION OF RIGHTS

"Section 1. All men are born equally free and independent and have certain inherent rights. Among these are life, liberty, and the pursuit of happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.

"Section 2. There shall be neither slavery nor involuntary servitude in this state, otherwise than for the punishment of crime, whereof the party shall have been duly convicted.

"Section 3. Every person may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no laws shall be passed to restrain or abridge the liberty of speech or the press. In all prosecutions or indictments for libel the truth may be given in evidence; and if it shall appear to the jury that the matter charged as libelous be true and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

"Section 4. The people shall at all times have the right in a peaceable manner to assemble together to consult for the common good.

"Section 5. The right of trial by jury shall remain inviolate and shall extend to all cases at law, without regard to the amount in controversy; but a jury trial may be waived by the parties, in all cases, in the manner prescribed by law.

"Section 6. Excessive bail shall not be required; excessive fines shall not be imposed; and cruel and unjust punishment shall not be inflicted.

"Section 7. In all criminal prosecutions the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process to compel the attendance of witnesses in his favor; and in prosecutions by indictment or information, [to have] a speedy public trial by an impartial jury of the county or district wherein the offense shall have been committed, which county or district shall have been previously ascertained by law.

"Section 8. No person shall be held to answer for a criminal offense unless on the presentment or indictment of a grand jury, except in cases of impeachment or in cases cognizable by justices of the peace or arising in the army or navy, or in the militia when in actual service in time of war or public danger; and no person for the same offense shall be twice put in jeopardy of punishment; nor shall be compelled in any criminal case to be a witness against himself. All persons shall before conviction be bailable by suffi-

cient sureties, except for capital offenses when the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.

"Section 9. Every person within this state ought to find a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws.

"Section 10. Treason against the state shall consist only in levying war against the same, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court.

"Section 11. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrants to search any place or seize any person or thing shall issue without describing, as near as may be, nor without probable cause, supported by oath or affirmation.

"Section 12. No bill of attainder, ex post facto law, or any law impairing the validity of contracts shall ever be passed; and no conviction shall work corruption of blood or forfeiture of estate.

"Section 13. The property of no person shall be taken for public use without just compensation therefor.

"Section 14. Every person of foreign birth, having filed his declaration of intention to become a citizen, and every such person residing in this state, having come into it a minor, without such declaration, shall have the same rights in respect to the possession, enjoyment, and descent of property as native-born citizens.

"Section 15. No person shall be imprisoned for debt in this state.

"Section 16. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect, or support any place of worship or to maintain any ministry against his consent; no human authority can in any case whatever control or interfere with the rights of conscience; no preference shall ever be given by law to any religious establishments or modes of worship; and no money shall be drawn from the treasury for the benefit of religious societies or theological or religious seminaries.

"Section 17. No religious test shall ever be required as a qualification to any office of public trust under this state; and no person shall be rendered incompetent to give evidence in any court of law or equity in consequence of his opinions on the subject of religion.

"Section 18. The military shall be kept under strict subordination to the civil power.

"Section 19. Writs of error shall never be prohibited by law.

"Section 20. No free government or the blessings of liberty can be preserved to any people but by a firm adherence to justice, moderation, temper-

ance, frugality, and virtue, and by frequent recurrence to fundamental principles.]

BYRON KILBOURN, Chairman"

Said articles were read the first and second times and ordered printed.

Resolutions were introduced and read as follows, to wit:

By Mr. Case: "*Resolved,* That the committee on education and school funds be instructed to inquire into the expediency of memorializing Congress to pass an act exchanging the school lands in the northern and unsettled portion of the territory for other lands west of the Wisconsin River."

By Mr. Estabrook: "*Resolved,* That the journal of the daily proceedings of this convention from the beginning be directed to be printed in quarto form, convenient for binding; and that 500 copies thereof be furnished in addition to those necessary for the use of the convention."

By Mr. Kennedy: "*Resolved,* first, That the public interest of this territory requires that the Indian title to the lands now in possession of the Menominee, between the Wolf and Wisconsin rivers, shall be extinguished without unnecessary delay.

"Second. That a copy of the above resolution be appended to any copies of the constitution which may be transmitted to the President of the United States or to either house of Congress."

By Mr. Lewis: "*Resolved,* That committee No. 2, on the executive, legislative, and administrative provisions, be instructed to inquire into the expediency of providing in the constitution that no member of either branch of the legislature shall directly or indirectly receive any fee or reward to bring forward or advocate any bill, petition, or other business to be transacted in the legislature, except when employed in behalf of the state."

By Mr. Warden: "*Resolved,* That this convention adjourn on Friday next, to meet on the first Monday in January."

By Mr. Carter: "*Resolved,* That the committee on schools and education be directed or requested to inquire into the expediency of establishing a system of free schools, and to report them for the consideration of the convention."

By Mr. King: "*Resolved,* That the committee on general provisions be instructed to inquire into the expediency of reporting a resolution in the nature of a petition to the Congress of the United States, praying that indemnity may be made to the state of Wisconsin for the portions of territory which have been allotted by law, on the south to Illinois, and on the northeast to Michigan."

By Mr. Pentony: "*Resolved,* That the committee on the judiciary be instructed to inquire into the expediency of having the clerk of circuit courts and office of register of deeds separate offices."

By Mr. Chase: "*Resolved,* That the committee on executive, legislative, and administrative provisions be instructed to inquire into the expediency of directing the legislature to provide by law for a limit to the amount of land which any person may own or hold under the laws of the state."

By Mr. Fitzgerald: "*Resolved,* That the committee on miscellaneous provisions be instructed to take into consideration the expediency of reporting a provision securing to every suitor in any and every court of the state the right

to prosecute or defend his suit, either in his own proper person, or by an attorney or agent of his choice, whether such agent be an attorney or not."

The resolution introduced by Mr. Gifford on the twentieth instant, relative to banks and banking, was then taken up, when Mr. Gale moved that the same be referred to the committee on banks and banking, which was agreed to.

The resolution introduced by Mr. Case on the twentieth instant, relative to the manner of voting, was then taken up. And the question having been put on the adoption of the same, it was decided in the affirmative.

The resolution introduced by Mr. Larrabee on the twentieth instant, relative to contracting for stationery, etc. for the use of the state, was then taken up. And the question having been put on the adoption of the same, it was decided in the affirmative.

The resolution introduced by Mr. Lewis yesterday, relative to the right of petition, was then taken up, when Mr. Lovell moved that said resolution be laid on the table, which was agreed to.

The resolution introduced by Mr. Case yesterday, relative to the duties of secretary of state, was then taken up, when Mr. Larrabee moved to amend the same by striking out the words "general provisions" and inserting "schools and school funds," which was agreed to. The resolution as amended was then adopted.

The resolution introduced by Mr. King yesterday, relative to the duties of officers in regard to fugitive slaves, was then taken up, when Mr. King by leave amended the resolution by striking out the words "general provisions" and inserting "judiciary."

Mr. Kilbourn thought the consideration and reference of the resolution equivalent to instructing the committee to whom it might be referred to report a provision in direct violation of the Constitution of the United States. Such a provision engrafted in a state constitution would be utterly futile, and he therefore moved to lay the resolution on the table.

Mr. Whiton inquired of the gentleman from Milwaukee (Mr. Kilbourn) what provision of the Constitution of the United States would be violated. If such would be its effect, he was entirely ignorant of it. Mr. Kilbourn said he could not at the moment refer to the section; but it was that clause in relation to persons held to service in one state escaping into another.

Mr. Whiton thought the object of the resolution had been entirely misconceived. The convention would see upon reference that it did not in any degree propose to alter the relation existing between master and slave. Suppose a slave to escape from servitude and come among us, the resolution merely declares that the public officers in the state shall not aid in his recapture and return. This violates no clause of the Constitution of the United States. That

instrument merely provides that no impediment shall be offered to his recapture, and not that state authorities shall aid in delivering him up. The incorporation of such a provision into the state constitution, therefore, was both constitutional and proper.

Mr. Doran differed somewhat from his colleague (Mr. Kilbourn) on this subject, but was still opposed to the resolution. Under the habeas corpus act a slave coming among us could at once have an inquiry instituted as to the cause of his detention. His objection was not, therefore, so much to its unconstitutionality, as to the fact that by its adoption it must necessarily suspend or nullify that act.

Mr. Castleman asked the gentleman from Rock (Mr. Whiton) for his legal opinion as to the operation of such a provision. Suppose a slave to have come among us and to be harbored in the house of a friend; by what process could he be reached?

Mr. Kilbourn said it was not his intention to argue this question at any length; but the position taken by the gentleman from Rock (Mr. Whiton) was so very extraordinary that he would read the clause from the Constitution of the United States bearing on the subject. (Mr. Kilbourn read the section relating to persons held to service in one state fleeing into another, etc.) Now it is argued that under this provision it is neither necessary nor proper for the state authorities to interfere or assist in the recapture or return of such fugitives. The laws of the United States give the owner the right to pursue his slave and capture him wherever he may be found. Suppose, then, the master comes here in such pursuit. Would the gentleman allow him to carry back the slave by force? Would he permit him to convey the fugitive again into servitude without any investigation or inquiry as to its legality? What must inevitably ensue if such a proceeding were tolerated? Would not scenes of lawless violence be constantly witnessed? The door would be left wide open to the kidnapper, who might seize his victim with perfect impunity, since no inquiry could be made as to the legality of his acts. And once beyond the bounds of the state, what power was then to bring him to account? This was suspending the rights of our citizens on too brittle a thread. If masters come here, we ought to compel them to show the authority on which they claim to take away any of our citizens; and if they have none, then the power of the state should interfere and shield such citizens from harm. The kidnapper should be taught by stringent laws and severe penalties that he cannot pollute our soil with impunity. And for this reason, if

no other, the contemplated restriction upon our state officers should have no place in the constitution.

Mr. Whiton thought the remarks of the gentleman did not touch the case. If, in the case supposed, a slave were to escape and come to Wisconsin, and his master to come after him, it is argued that with such a provision as that contemplated he would have no power to make an arrest. This is an entire mistake. The laws of the United States authorize an arrest. A habeas corpus could then be served out, and this would put the right of the master in issue on a trial. If found for him, he could quietly remove his property. It was not the design to interfere with him further, but merely to prohibit our own officers from being employed by slaveholders to hunt up fugitives. No such service, in his opinion, ought to be required of them.

Mr. Judd would express no opinion either way as to the merits or demerits of the resolution; but he thought the debate premature. He was in favor of referring the subject to the judiciary committee, and there would be time enough to discuss the question after they had made their report.

Mr. Chase concurred in the opinion that it was inexpedient to discuss the resolution at this time. He would remark, however, that there seemed to be much confusion of ideas on the subject under debate. The Constitution of the United States did not, to his knowledge, admit that slaves were the subject of property. It had provided that persons held to service were to be subject to arrest and return, but not that masters might pursue and capture their property in another state.

The resolution as amended was then adopted.

The resolution introduced by Mr. Richardson yesterday, relative to the education of children, was then taken up. And the question having been put on the adoption of the same, it was decided in the affirmative.

The resolution introduced by Mr. Folts yesterday was then taken up, when Mr. Chase moved to amend by striking out the word "full," which was agreed to. The resolution as amended was then adopted.

The convention then resolved itself into committee of the whole for the consideration of article No. 1, on executive, Mr. Rountree in the chair.

Mr. Whiton moved to amend the first section by striking out the word "two" and inserting the word "one," so that the governor should be chosen annually. He said his object in offering the amendment was not to get a vote upon the question at this time, but merely

to draw attention to the subject. The term reported by the amendment he thought was more democratic than the term proposed by the committee. It was a generally admitted fact that, the shorter the term of office, the more the officer would feel his responsibility to the people. It was proposed to fix the terms of other officers at one year. And why not that of the governor? It would certainly cost no more to elect annually than biennially. If a general election was to be held annually, as doubtless it would be, the governor, so far as convenience and economy were concerned, might as well be elected annually as otherwise. It would not prevent the same man from holding the office two or more years if the people were desirous that he should; for if the governor discharged his duty faithfully and the political opinions of the people who elected him should undergo no change, they might and very probably would reëlect him. But if the public sentiment which elected him should change in the course of the year and become adverse to the policy of the executive, he ought not to be reëlected. They had abundant evidence in the history of the past that the political opinions of men were liable to change. Very great changes in public opinion upon political subjects had taken place in the course of a single year; and it was fair to conclude that equally extensive and sudden changes in public opinion might occur again. And this he thought was a good reason why the term of the office of governor should be limited to one year. Another objection to a long term for the chief executive office was that it enabled him to gather around him a clique of politicians and to fortify himself against competitors by a clique influence.

Mr. Lovell remarked that the term agreed upon and reported by the committee was the same as that provided in the old constitution, which met with very general approbation. He agreed to the principle of the frequent reversion of all power to the hands of the people as one of the highest importance. But he thought that once in two years in respect to the executive department was often enough. As to the clique influences alluded to by the gentleman from Rock, he did not think there was the least danger to be apprehended from this source. The executive office would be entirely divested of the appointing power—at least he thought it should be, and he had no doubt that such was the sentiment of the convention, and that it would be so expressed in the constitution. The appointing power had been the chief if not the only source of the improper

influences alluded to. Divested of this power, the executive would have no means of drawing around him a clique and building up a central influence.

One object to be gained in fixing the term at two years was to have the governor reside at the seat of government. Under a state government this would be very important; and yet it would be unreasonable to require an officer to change his place of residence for the short term of one year; and he believed that but very few men who were capable of filling the office to the honor and advantage of the state would consent to do it.

Another consideration in favor of the longer term was to give the incumbent an opportunity to become familiar with the duties of the office and the better to discharge them. It was essential to the honor as well as to the interests of the state to have public duties in the hands of officers who had not only the capacity but the experience necessary to their prompt and accurate performance. Elect a governor for but one year, and he would scarcely learn the routine of his duties before his term would expire; and his successor might be a new man and labor under the same disadvantage, being unacquainted with the duties of the office. Still he was not very tenacious of his opinion. The shorter term might work better than he anticipated; but he considered the longer time as decidedly prefer able.

Mr. Whiton alluded to the question of biennial sessions of the legislature and remarked that should that policy be adopted, it would be necessary to extend the executive term to two years. As he remarked when first up, he did not offer the amendment for the purpose of getting a vote upon it at that time, but merely to draw attention to the subject and elicit some discussion upon it, and proposed to withdraw it.

Mr. Chase hoped the amendment would not be withdrawn. Mr. Whiton said he would not withdraw it if gentlemen wished to discuss it further.

Mr. Chase did not rise for the purpose of discussing the question at length, but merely to say that he was in favor of short terms in all the departments of the government, low salaries, and a large legislature; and entertaining these views, he was in favor of the amendment.

Mr. Castleman gave notice that should the pending amendment

be rejected, he would move another to the effect that the same man should not be elected for two successive terms.

Mr. Kilbourn was opposed to the amendment of the gentleman from Rock. He agreed with him thus far—that the terms of office should be sufficiently short to impress the officer with a consciousness of his responsibility to the people. But the doctrine of short terms might be carried too far—so far as to conflict with and violate other and equally important principles. Terms of office might be so long as to remove the officer too far from accountability; and they might be so short that he could accomplish nothing of any value to the public. If gentlemen were disposed to fix the term at one year, in preference to two, on the ground that it is more democratic and makes the officer more immediately responsible to the people, they might reduce it to six months, upon the same principle and for the same reasons; while it was quite obvious that a governor elected for six months could have time to accomplish little or nothing. There was medium ground upon this question; and he thought that two years, while it was short enough to secure the desideratum of accountability, was as short as was compatible with the ends for which an executive was desirable. If the convention should agree upon biennial sessions of the legislature, the executive term could not be less than two years; but whether the sessions of the legislature were made biennial or annual, he thought two years for the executive term was short enough. He hoped the people of Wisconsin would never elect a man to that office who could not be trusted with its powers for two years. As to executive cliques and a central influence being likely to grow out of the longer term, he did not think there was the least danger of it. The governor would probably have no patronage to bestow, except a few military appointments, respecting which but very little interest would be felt.

Mr. McDowell was opposed to the amendment on the ground that if the term should be fixed at one year it would subject those elected to great inconvenience in changing their place of residence for a short period; or it would subject the citizens of the state to the inconvenience of never having their chief magistrate reside at the seat of government.

Mr. Cole of Grant hoped the amendment would not prevail. Short terms might be, in the main, correct. But how short they could be made without endangering the interests of the state was the question. He admitted that the executive and administrative

offices had been heretofore liable to abuse by the great amount of patronage placed in their hands; and by this means extended terms of office had become objectionable. This evil was being remedied by the removal of the appointing power from the executive; and he believed the danger now was that the government would be rendered unstable and its policy fluctuating by unwise and unreasonable limitations of the terms of office. Steadiness and uniformity in the policy of a government were of the highest importance to the general prosperity; and this advantage could not be secured if the terms of office were limited to the shortest possible periods. On the contrary, every incumbent would be likely to undo what his predecessor had commenced and adopt a course of policy of his own, which in turn would be left unfinished and be abandoned by his successor; and thus much would be undertaken and nothing matured. He did not regard either the executive or legislative department of the government as the immediate agent of the popular will. Instead of this it was often necessary that the existing authorities should for the moment resist and restrain the popular will and compel it to act with more mature deliberation than it might in a moment of excitement, if it had the immediate control of its own agents. There had been such things as democracies running mad, and might be again. He knew these sentiments were unpopular and might be regarded as antirepublican; but he could not help that; he believed they were in harmony with the spirit and genius of our system of government when rightly understood.

Mr. Chase was willing gentlemen should have all the advantage they could derive from the supposition of reducing the terms of office to six months. There was really no force in the argument. It required one year to complete a circle of official duties, and one year was therefore the shortest practicable term of office. On the score of experience in the line of official duties, the same arguments which were used in favor of extending the time to two years would apply in favor of extending it to three or four years, with redoubled force. But all these arguments seemed to take for granted the incorruptibility of the officer. He hoped the amendment would be adopted; and if the convention should afterwards extend the circle of government operations by providing for biennial sessions, the executive term could be made to conform to it.

Mr. Judd opposed the amendment, although it was, as had been said by the gentleman from Rock, more democratic in its features

than the term reported by the committee. But it should be remembered that our government was not to be strictly a democracy—*that* was impracticable. They were obliged to resort to the representative system; and it was not the policy of a representative government to repeat the choice of agents any oftener than was necessary to secure a strict accountability; and to resort to new elections oftener than this would involve unnecessary trouble and expense. He alluded to the trouble and expense of electing a governor every year as a substantial reason against it, in the absence of any real necessity for it under a constitution which witholds from him the appointing power. The term of one year would not enable the people to form any opinion as to the fitness of the incumbent, because no system of policy could be matured in a single year.

[Mr. Judd was opposed to the amendment, notwithstanding it was declared democratic. He was most happy to find the gentleman from Rock (Mr. Whiton) in favor of democracy. He said our government was not democratic in the broad sense of the term; but it was a mixed form of government founded on democratic principles. A term of two years was more in accordance with the convenience of the people. We had been told that there would be no expense attending an annual election of governor. There would not perhaps be any public expense, but there would be individual expenses. The people will assemble in conventions. A candidate must be presented in some form; and it would be more agreeable once in two years. The governor is the executive power of the state; and he had no fear but he would discharge his duty. In one year the people could not fully know his policy. He proposed to strip him of all power and make it his business to execute the laws. He should reside at the seat of government—it is right that the people should know where he is—there are many things required of him. The public records are there—inquiries are often made in regard to them, and the governor should be on hand. He thought it was not proper for the people to elect a governor and compel him to remove for one year. He was in favor of short terms when reasonable.—*Tri-Weekly Express,* Dec. 23, 1847.]

Mr. Whiton had heard no argument yet which altered his opinions or led him to believe the amendment should not be adopted. He had resided in a state where they elected their executive annually, and no inconvenience or harm had resulted from it. In several of the states they elected their legislatures annually; and in all of those

states they elected (with one or two exceptions) their governors annually; and in states where they elected their legislatures biennially they elected their governors biennially also. There were exceptions, but as a general rule the states throughout the Union elected their governors as often as they did their legislatures; and he believed that to be the correct principle.

The gentleman from Grant (Mr. Cole) was in favor of the longer term as a means of securing the stability of the government. He (Mr. Whiton) too wished to see a stable government, but he wished to see it as the result, not of long terms of office, but of stability in the people. It had been said by some of our ablest statesmen that but for our intercourse with foreign nations it would be better for the nation to elect our president annually.

Mr. Lovell was glad this discussion had arisen; and he thought it a favorable time to dispose of the question. He was, as he had before stated, in favor of short terms of office, but how short they should be in a particular case was the question. The executive term he believed should be short, but at the same time it should be long enough to enable the people to form some opinion respecting the policy of the incumbent. It was insisted that one year was a more democratic term than two years and should therefore be preferred. But it might with the same propriety be said that six months or three months or one day was a more democratic term than one year and should be preferred on that account. For his own part, he could not fix upon any one period of duration which was in itself more democratic than another. The question was one of mere expediency in view of the nature of the office and the circumstances of the people.

Allusion had been made to the executive terms in the New England states. But the circumstances of the people of New England were very different from ours. A settled state of society existed there. The people were all natives of the states in which they resided. They were acquainted with each other, and with their public men, and had for the most part a settled policy; while the reverse of all this was true in our case.

He could not subscribe to the sentiment that it would be best to elect a president of the United States annually, our foreign relations out of the question. He should deprecate the annual recurrence of the excitement and acrimony engendered by a presidential election, when parties would move heaven and earth to carry their

points; and the excitement and ill feeling inseparable from popular elections was a valid objection to their recurrence oftener than was necessary to secure the great object for which they were instituted —responsibility of officers to the people.

Mr. Chase was not ignorant of the lengthy and able arguments produced during the formation of the federal constitution in favor of long and short terms of office, but it was unnecessary to repeat them there. The question was simply whether one or two years was the most suitable term for the office of governor of Wisconsin, and he had reasons sufficient to induce him to prefer the shorter term. He believed that short terms and frequent elections would tend to allay rather than aggravate the excitement attendant upon political contests. Political parties might move heaven and earth once in four years, but he did not believe they could do it every year.

The amendment was lost, 27 to 39.

Mr. Castleman here offered his amendment—that no person should be eligible for two successive terms. Mr. Judd was opposed to the amendment. He was opposed to the principle in whatever form it might be presented. He did not believe he had any right to say to the good people of Wisconsin, "If a man has served you faithfully and to your satisfaction for one term, you shall not elect him to serve you for a second term." It was aristocratic, unreasonable, and unfounded in any principle of justice or sound policy. He never voted for such a proposition in his life and he never would.

The committee then rose and by their chairman reported progress thereon and asked leave to sit again. Leave was granted.

On motion of Mr. Jackson the convention adjourned.

THURSDAY, DECEMBER 23, 1847

Prayer by the Rev. Mr. Penman.

The journal of yesterday was read.

Mr. Chase presented a petition of sundry inhabitants of Ceresco and vicinity, praying that a homestead exemption may be secured to citizens by the constitution, which was read and referred to the committee on schedule and miscellaneous provisions.

Mr. Chase, from the committee on banks, banking, and incorporations, made the following report, to wit:

"Your committee deem it inexpedient to report an article on banking in accordance with the spirit of the resolution reported to them, providing for the adoption by the state of a system of free or general banking. They believe the term 'free banking' or 'general banking' to mislead and deceive the public mind, inasmuch as no system of banking, whether termed 'free' or 'special,' can extend equally in its privileges and advantages to all the inhabitants of the state, but must be confined in its advantages entirely to the wealthy and speculating classes, to the entire exclusion of a large portion of the industrious and poorer classes, and would therefore be in its operation and effect granting exclusive and monopolizing privileges to a small portion of our inhabitants, to the exclusion of the great mass of the population, under a pretense of 'free' and 'general' laws.

"Your committee therefore believe, if any system of banking is to be adopted by which exclusive privileges are to be conferred upon a few to the exclusion of the many, that in this sparsely settled country where the great body of the wealth is in landed property, a system of special charters, definite in their object, specific in their character, and single in their nature would be far preferable to a general law which would at once flood our country with a worthless and depreciated currency. The committee have therefore instructed me, in accordance with their views, to submit the following article on

BANKS AND BANKING

"Section 1. The legislature shall not have power to create, authorize, or incorporate, by any general or special law, any bank or banking power or privilege, or any institution or corporation having any banking powers or privileges whatever, except in accordance with the following sections of this article.

"Section 2. The legislature may at any regular session by a special law authorize, establish, or incorporate a person or persons, institution or institutions with banking powers and privileges. But no such law or act of incorporation shall be valid or take effect unless the same shall have been submitted to a separate and distinct vote of the electors at the next general election succeeding the passage of the same and shall have received in its favor a majority of all the votes cast at such election.

"Section 3. Every law or act of incorporation authorizing or conferring

any banking power or privilege shall provide for the individual liability of all the stockholders to the full amount of all indebtedness.

"Section 4. Every law or act of incorporation authorizing or conferring any banking powers or privileges shall be single in its object and shall in no case authorize or allow the establishment of any branch or agency with the same or similar powers.

"Section 5. No law or laws, act or acts of incorporation providing for the creation, establishment, or organization of more than one bank, banking house, or company, or individual, with banking powers and privileges, shall be submitted to the electors at the same election."

The above report, No. 3 [4?], article on banks and banking, was read the first and second times. Mr. Larkin moved that 500 copies thereof be printed; and pending the question thereon Mr. Whiton moved to lay the same upon the table, which was agreed to.

Mr. Crandall introduced the following resolution, which was read, to wit: "*Resolved*, That the use of this hall be given for this evening to Dr. S. G. Maxson for the purpose of giving a lecture on physiology, elucidated by the aid of a French manikin." Mr. Crandall moved that the rules be suspended for the consideration of said resolution now, which was disagreed to.

The resolution introduced by Mr. Case yesterday, relative to memorializing Congress on the subject of school lands, was then taken up. And the question having been put on the adoption of the same, it was decided in the affirmative.

The resolution introduced by Mr. Estabrook yesterday, relative to printing the journals, was then taken up, when Mr. Kilbourn moved to amend the resolution by adding "and that he be entitled to payment agreeably to the usual rates for similar work." And pending the question thereon, [Mr. Chase moved that the said resolution be laid upon the table. And the question having been put, it was decided in the affirmative.] And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 38, negative 31; for the vote see Appendix I, roll call 11].

Mr. Kilbourn, from the committee on general provisions, by leave reported No. 5, article on boundaries, which was read the first and second times, to wit:

Boundaries

"Section 1. It is hereby ordained and declared that the state of Wisconsin 'doth consent and accept of the boundaries' prescribed in the act of Congress entitled 'An Act to enable the people of Wisconsin Territory to form a constitution and state government, and for the admission of such state into the Union,' approved August 6, 1846: *Provided*, however, That the following alteration of the aforesaid boundary be and hereby is proposed to the Congress of the United States as the preference of the state of Wisconsin; and if the same shall be assented and agreed to by the Congress of the United States, then the same shall be and forever remain obligatory on the state of Wisconsin, viz.: Leaving the aforesaid boundary line at the foot of the rapids of the St. Louis River; thence in a direct line bearing southwesterly to the mouth of

Rum River, where the same empties into the Mississippi River; thence down the main channel of the said Mississippi River, as prescribed in the aforesaid boundary.

"Section 2. This ordinance is hereby declared to be irrevocable without the consent of the United States."

Mr. Dunn moved that the same be laid upon the table, which was agreed to.

[Mr. Brownell gave notice that he would present a minority report, when Mr. Dunn moved that the majority report be laid on the table to give time for the minority report to be presented, which motion prevailed.

Mr. Estabrook's resolution of yesterday, relative to printing 500 copies of the journals in quarto form, coming up, Mr. Kilbourn moved to amend by adding "and that the printer be entitled to payment at the usual rates for printing the same." Mr. Judd did not know which to admire most—the resolution or the amendment, coming from the source it did. The amendment was in direct violation of a resolution of this body. The convention had resolved to receive proposals for doing the incidental printing. Bids had been received, and the lowest bid had been accepted. The bid had been made with reference to the ordinary work of the convention; and he thought it was unjust to require him to do this work. He did not know what was wanted of the journal printed in this form; it would be inaccurate and not fit to publish; it would be of no use whatever. He deprecated all attempts to evade the objects of the convention. A contract was made to do the printing for one cent, and he saw no propriety in attempting to evade it. The printing should be done according to contract. He was sorry proposals had been made by printers lower than the work could be done; but as it had been done, it was their business, and they should abide by the contract. He thought it was improper that the work should be done in this way; it would not obviate the printing of the journal hereafter. He had hoped that the printing business had been decided. He hoped the convention would stand up to the decision they had made and allow no attempt to evade the question to prevail.

Mr. Chase moved to lay the resolution on the table, and on this motion the ayes and noes were called. (Ayes 37; noes 32.)—*Tri-Weekly Express*, Dec. 23, 1847.]

Resolutions were introduced and read as follows, to wit:

By Mr. Schœffler: "*Resolved*, That the committee on education and school funds be instructed to inquire into the expediency of allowing common or dis-

trict school teachers, in such districts where a plurality of inhabitants of foreign birth reside, to teach besides the English language such other language or languages as the inhabitants of such district should wish to be taught as a branch of education."

By Mr. O'Connor: *"Resolved,* That the committee on education and school funds be instructed to inquire into the propriety of incorporating a clause into the constitution, exempting from taxation all school, university, college, or seminary lands, together with all other property properly pertaining thereto."

By Mr. Carter: *"Resolved,* That the committee on the judiciary be instructed to report on the propriety of depriving judicial officers of all power to appoint to office."

The resolution introduced by Mr. Kennedy yesterday, relative to "memorializing Congress to extinguish the Indian title to certain lands," etc., was then taken up, when Mr. Kennedy moved that the resolution be referred to the committee on schedule and other miscellaneous provisions, which was agreed to.

The resolution introduced by Mr. Lewis yesterday, relative to prohibiting members of the legislature from receiving fees, etc., was then taken up. And the question having been put on the adoption of the same, it was decided in the affirmative.

The resolution introduced by Mr. Warden yesterday, relative to adjournment, was then taken up, when Mr. Sanders moved that the same be laid on the table, which was agreed to.

The resolution introduced by Mr. Carter yesterday, relative to free schools, was then taken up. And the question having been put on the adoption of the same, it was decided in the affirmative.

The resolution introduced by Mr. King yesterday, relative to boundaries, was taken up, when

Mr. Judd pointed out a typographical error in the resolution as printed in the journal of yesterday, as an illustration of the very imperfect manner in which the journal would be printed if done daily in book form as had been advocated by some members of the convention. Mr. King would exculpate the printers from all blame in respect to the error pointed out by the gentleman from Dodge. The resolution was printed according to copy. The error was his own and not the printer's. Mr. Dunn was opposed to the resolution. He thought the convention was chalking out a great deal of business which did not necessarily belong to them. If it was desirable to petition Congress for a redress of the grievances complained of, it could be done at any future time by the legislature. If attached to the constitution, it might embarrass our admission into the Union. Should Congress, on the presentation of our constitution, find attached to it a condition or memorial calling upon them for a large appropriation as an indemnity for territory, it might and probably

would greatly embarrass the action of Congress on the acceptance or rejection of our constitution and delay indefinitely the admission of the state into the Union. He hoped the convention would confine itself to the business of making a constitution, and leave this and all other matters not necessarily connected with the constitution to the future action of the legislature. He would vote against the resolution.

Mr. Larrabee moved to amend the same by striking out the words "committee on general provisions" and inserting the words "a select committee of three be appointed with instructions," which was agreed to. Mr. Gale moved to amend by adding "and on the northwest to Minnesota," which was disagreed to.

Pending the question on the adoption of the resolution, the morning hour having expired, the convention resolved itself into committee of the whole for the further consideration of article No. 1, on executive, Mr. Rountree in the chair. And after some time spent therein the committee rose and by their chairman reported progress thereon and asked leave to sit again. Leave was granted.

Mr. Judd moved that the convention do now adjourn, which was agreed to. And a division having been called for, there were 32 in the affirmative and 27 in the negative. So the convention adjourned.

FRIDAY, DECEMBER 24, 1847

Prayer by the Rev. Mr. Read.
The journal of yesterday was read and corrected.

[Mr. Judd wished to call the attention of the convention to a report in the *Argus* which represented him as finding fault with the printing of the journal. This was not the case. He only wished to show that the journals printed in haste from day to day could not be correct and therefore were not fit to be published for future reference. He attached no blame to the editors or printers.—*Tri-Weekly Express,* Dec. 25, 1847.]

Mr. McDowell presented a petition of Jacob LyBrand of Monroe asking that the rights of citizens be extended to persons of color, which was referred to the committee on general provisions.

Mr. Prentiss, from the committee on the schedule and other miscellaneous provisions, made the following report, to wit:

"The committee on schedule and miscellaneous provisions, to whom were referred the following resolutions: first, "That the public interest of this territory requires that the Indian title to the land now in possession of the Menominee, between the Wolf and Wisconsin rivers, shall be extinguished without unnecessary delay"; second, "That a copy of the above resolution be appended to any copies of the constitution which may be transmitted to the President of the United States or to either house of Congress," having had the same under consideration, respectfully report that in their opinion all such matters wholly unconnected with the constitution should be left to the legislature.

"Your committee therefore deem it inexpedient to take any action on said resolutions and would ask leave to be discharged from the further consideration thereof.

THEODORE PRENTISS
JOHN L. DORAN
JOSEPH COLLEY
G. W. FEATHERSTONHAUGH
J. T. LEWIS
JOSEPH WARD"

The said report was accepted and the committee discharged from further consideration of the subject.

Mr. Kilbourn, from the committee on general provisions, reported No. 6, article on suffrage, as follows:

SUFFRAGE

"Section 1. All free white male persons, of the age of twenty-one years or upwards, belonging to any of the following classes of persons, shall constitute the qualified electors at any election authorized by this constitution, or by any law:

1. Citizens of the United States who at the time of the adoption of this constitution by the people of Wisconsin were actual residents of this state.

2. Citizens of the United States, having become residents of the state of Wisconsin after the adoption of this constitution, and who shall have resided within this state for six months.

3. Persons not citizens of the United States who at the time of the adoption of this constitution by the people were actual residents of Wisconsin and had declared their intention to become citizens of the United States in conformity with the laws of Congress for the naturalization of aliens.

4. Persons not citizens of the United States who after the adoption of this constitution have declared their intention to become such in conformity with the laws of Congress for the naturalization of aliens and who shall have actually resided within this state for six months.

"Section 2. No elector shall be entitled to vote except in the district, county, township, or ward in which he shall have actually resided for ten days next preceding such election: *Provided*, That any such elector shall be permitted to vote anywhere in the state for state officers, and for electors of president and vice-president of the United States.

"Section 3. No person under guardianship, or non compos mentis, insane, or convicted of treason or felony shall be permitted to vote at any election unless restored to civil rights by law or by removal of natural or other inability.

"Section 4. All votes shall be given by ballot, except for such township officers as may by law be directed or allowed to be otherwise chosen; and in all elections to be made by the legislature, the members thereof shall vote viva voce, and their votes shall be entered on the journal.

"Section 5. Electors shall in all cases except treason, felony, or breach of the peace be privileged from arrest during their attendance at election, and in going to and returning from the same.

"Section 6. No elector shall be obliged to do military duty on the days of election except in time of war, actual invasion, insurrection, or public danger; nor shall any elector on the days of election be obliged to attend any court either as a suitor, witness, or juror.

"Section 7. No person shall be deemed to have lost his residence in this state by reason of his absence on business of the United States or of this state.

"Section 8. No soldier, seaman, or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed in any military or naval place within the same.

"Section 9. It shall not be lawful for any voter to make any bet or wager on any election at which he shall vote; and it shall be the duty of the legislature to prescribe as a part of the oath to be taken by any voter that he has not made any bet or wager on the election at which he offers his vote.

"Section 10. Laws shall be made for ascertaining by proper proofs the persons who shall be entitled to the right of suffrage hereby established."

Said article was read the first and second times and ordered printed.

Mr. Dunn, from the committee on the judiciary, reported No. 7, article on the organization and functions of the judiciary.

ORGANIZATION AND FUNCTIONS OF THE JUDICIARY

"Section 1. The court for the trial of impeachments shall be composed of the senate. The house of representatives shall have the power of impeaching all civil officers of this state for corrupt conduct in office or for crimes and misdemeanors; but a majority of all the members elected shall concur in an impeachment. On the trial of an impeachment against the governor, the lieutenant governor shall not act as a member of the court. No judicial officer shall exercise his office after he shall have been impeached, until his acquittal. Before the trial of an impeachment the members of the court shall take an oath or affirmation, truly and impartially to try the impeachment according to evidence; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office or removal from office and disqualification to hold any office of honor, profit, or trust under this state; but the party impeached shall be liable to indictment, trial, and punishment, according to law.

"Section 2. The judicial power of this state, as to matters of both law and equity, shall be vested in a supreme court, circuit courts, courts of probate, and in justices of the peace. The legislature may also vest such jurisdiction as shall be deemed necessary in municipal courts and shall have power to establish inferior courts in the several counties with limited civil and criminal jurisdiction: *Provided*, That the jurisdiction which may be vested in municipal courts shall not exceed in their respective municipalities that of circuit courts in their respective circuits, as prescribed in this constitution. And that the legislature shall provide as well for the election of judges of the municipal courts as of the judges of inferior courts, by the qualified electors of the respective jurisdictions.

"Section 3. The supreme court, except in cases otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be coextensive with this state; but in no case removed to the supreme court shall a trial by jury be allowed in said court. The supreme court shall have a general superintending control over all inferior courts. It shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and other original and remedial writs, and to hear and determine the same.

"Section 4. Until the legislature shall otherwise provide, the judges of the several circuit courts shall be judges of the supreme court, a majority of whom shall constitute a quorum; and the concurrence of a majority of the judges present shall be necessary to a decision. The legislature shall have power, if they should think it expedient and necessary, to provide by law for the organization of a separate supreme court, with the jurisdiction and powers prescribed in this constitution, to consist of one chief justice and two associate justices, to be elected by the qualified electors of the state at such time and in such manner as the legislature may provide. The said judges shall continue in office for such term as the legislature may determine by law.

"Section 5. The state shall be divided into five judicial circuits, to be composed as follows: The first circuit shall comprise the counties of Racine, Walworth, Rock, and Green; the second circuit, the counties of Milwaukee,

Waukesha, Jefferson, and Dane; the third circuit, the counties of Washington, Dodge, Columbia, Marquette, Sauk, and Portage; the fourth circuit, the counties of Brown, Manitowoc, Sheboygan, Fond du Lac, Winnebago, and Calumet; and the fifth circuit shall comprise the counties of Iowa, Lafayette, Grant, Crawford, and St. Croix; and the county of Richland shall be attached to the county of Iowa, the county of Chippewa to the county of Crawford, and the county of La Pointe to the county of St. Croix for judicial purposes, until otherwise provided by the legislature.

"Section 6. The legislature may alter the limits or increase the number of circuits, making them as compact and convenient as may be, and bounding them by county lines; but no such alteration or increase shall have the effect to remove a judge from office. In case of an increase of circuits the judge or judges shall be elected as provided in this constitution and receive a salary not less than that herein provided for circuit judges.

"Section 7. For each circuit there shall be a judge chosen by the qualified electors therein, who shall hold his office as is provided in this constitution and until his successor shall be chosen and qualified; and after he shall have been elected he shall reside in the circuit for which he was elected. One of said judges shall be designated as chief justice, in such manner as the legislature shall provide. And the legislature shall at its first session provide by law as well for the election of as for classifying the circuit judges to be elected under this constitution, in such manner that one of said judges, to be ascertained as the legislature may direct, shall go out of office every two years. And thereafter the judge elected to fill the office shall hold the same for ten years.

"Section 8. The circuit courts shall have original jurisdiction in all matters, civil and criminal, within this state, not otherwise excepted in this constitution and not hereafter prohibited by law, and appellate jurisdiction from all inferior courts and tribunals, and a supervisory control over the same. They shall also have the power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and all other writs necessary to carry into effect their orders, judgments, and decrees, and give them a general control over inferior courts and jurisdictions.

"Section 9. When a vacancy shall happen in the office of a supreme or circuit judge, such vacancy shall be filled by an appointment of the governor, which shall continue until a successor is elected and qualified, and when elected such successor shall hold his office for the residue of the unexpired term. There shall be no election for a judge or judges at any general election for state or county officers, nor within thirty days either before or after such election.

"Section 10. Each of the judges of the supreme and circuit courts shall receive a salary, payable quarterly, of not less than $1,500 annually. They shall receive no fees of office or other compensation than their salaries. They shall hold no other office of public trust; and all votes for either of them for any office, except that of judge of the supreme or circuit court, given by the legislature or the people, shall be void. No person shall be elected to the office of judge who is not a citizen of the United States, who shall not have attained the age of twenty-five years, and who shall not be a qualified elector in the circuit for which he may be elected at the time of election.

"Section 11. The supreme court shall hold at least one term annually, at the seat of government of the state, at such time as shall be provided by law. And the legislature may provide for holding other terms, and at other places, when they may deem it necessary. A circuit court shall be held in each county of this state, organized for judicial purposes, at least twice in each year. The circuit judges may hold courts for each other and shall do so when required by law.

"Section 12. There shall be a clerk of the circuit court chosen in each county organized for judicial purposes, by the qualified electors therein, who shall hold his office for two years subject to removal as shall be provided by law. In case of vacancy the judge of the circuit court shall have the power to appoint a clerk until the vacancy shall be filled by an election. The clerk thus elected or appointed shall give such security as the legislature may require, and when elected shall hold his office for a full term. The supreme court shall appoint its own clerk; and the clerk of a circuit court may be appointed clerk of the supreme court.

"Section 13. Any judge of the supreme or circuit court may be removed from office by address of both houses of the legislature, if two-thirds of all the members elected to each house concur therein; but no removal shall be made by virtue of this section unless the judge complained of shall have been served with a copy of the charges against him as the ground of address and shall have had an opportunity of being heard in his defense. On the question of removal the ayes and noes shall be entered on the journals.

"Section 14. There shall be chosen in each county by the qualified electors thereof a judge of probate, who shall hold his office for two years and until his successor is elected and qualified, and whose jurisdiction, powers, and duties shall be prescribed by law.

"Section 15. The electors of the several towns at their annual town meeting, and the electors of cities and villages at their charter elections, shall in such manner as the legislature may direct elect justices of the peace, whose term of office shall be for two years and until their successors in office shall be elected and qualified. In case of an election to fill a vacancy occurring before the expiration of a full term the justice elected shall hold for the residue of the unexpired term. Their number and classification shall be regulated by law; and the tenure of two years shall in no wise interfere with the classification in the first instance. The justices thus elected shall have civil and criminal jurisdiction coextensive with the county in which they are elected, in such cases as shall be prescribed by law.

"Section 16. Tribunals of conciliation may be established, with such powers and duties as may be prescribed by law; but such tribunals shall have no power to render judgment to be obligatory on the parties, except they voluntarily submit their matters in difference and agree to abide the judgment or assent thereto in the presence of such tribunal, in such cases as shall be prescribed by law.

"Section 17. The style of all writs and process shall be 'The state of Wisconsin.' All criminal prosecutions shall be carried on in the name and by the authority of the same, and all indictments shall conclude against the peace and dignity of the state.

"Section 18. The legislature shall impose a tax on all civil suits commenced or prosecuted in the municipal, inferior, and civil courts, which shall be paid into the treasury of the state and shall constitute a fund to be applied towards the payment of the salary of judges.

"Section 19. The testimony in causes in equity shall be taken in like manner as in cases at law; and the office of master in chancery is hereby abolished.

"Section 20. Any suitor in any court in this state shall have the right to prosecute or defend his suit, either in his own proper person or by an attorney or agent of his choice.

"Section 21. The legislature shall provide by law for the election of one circuit attorney in each of the judicial circuits of this state and prescribe his term of office, duties, and compensation. And they shall also provide for the election or appointment of a county attorney in each organized county of this state, whose term of office, duties, and compensation shall also be prescribed by law.

"Section 22. The legislature shall provide by law for the speedy publication of all statute laws and of such judicial decisions made within the state as may be deemed expedient. And no general law shall be in force until published.

CHARLES DUNN
E. V. WHITON
A. G. COLE
GEO. GALE
S. R. MCCLELLAN
Committee"

Said article was read the first and second times and ordered to be printed.

Mr. Fenton introduced the following resolution, which was read, to wit: "*Resolved,* That when this convention adjourns, it adjourn over to Monday morning next." Mr. Carter moved that the rules be suspended for the consideration of said resolution now, which was disagreed to. And a division having been called for, there were 31 in the affirmative and 22 ["32" in MS] in the negative.

Resolutions were introduced and read as follows, to wit:

By Mr. Carter: "*Resolved,* That it be referred to the committee on administrative provisions to inquire into the expediency of restricting the annual session of the legislature of the state to a term not exceeding sixty days; and that whenever the legislature shall continue in session beyond that time, they shall do so without compensation, except in cases of extreme emergency, in which cases the governor may have the power to determine."

By Mr. Vanderpoel: "*Resolved,* That the committee on miscellaneous provisions be instructed to inquire into the expediency of reporting a provision exempting the homestead of the agriculturist to a certain amount of valuation and to all other classes a like amount in value, to be selected by the owner from forced sale on execution."

By Mr. Richardson: "*Resolved,* That the committee on general provisions be instructed to inquire into the expediency of incorporating a clause in the constitution exempting from taxation the property of the state and counties,

both real and personal, and all such property set apart either by virtue of law or by private donation or bequeathment, for religious, school, and charitable purposes."

By Mr. Lewis: "*Resolved*, That the committee on the administration and powers of the legislature be instructed to inquire into the expediency of providing in the constitution that every law passed by the legislature shall in its details be in accordance with its title."

By Mr. Harvey: "*Resolved*, That it be referred to the second standing committee to consider and report as to the propriety of prohibiting the legislature from granting any privileges or exemptions to any citizens beyond those of other citizens, and from granting to any associations of individuals or body corporate any privileges or exemptions which are denied to other citizens, except such as are expressly provided for in the constitution.

"*Resolved*, That it be referred to the same committee to consider and report as to the propriety and expediency of directing that the legislature shall be prohibited from passing any lien law that shall be partial in its operation; but that it shall be provided in any lien law hereafter passed that all classes of laborers shall have equal privileges to a lien upon any property upon which their labor shall have been bestowed."

By Mr. Carter: "*Resolved*, That members and other persons be prohibited from smoking in this room."

The resolution introduced by Mr. King on the twenty-second instant, relative to claiming indemnity of the United States, was then taken up.

Mr. King said he would briefly notice the remarks of the gentleman from Lafayette (Mr. Dunn) made yesterday. It was by no means his desire to attach anything to the constitution which would operate as a clog. The resolution merely directed the committee to inquire into the expediency of the measure. If they thought it proper they would so report. If not, it would of course be left to future legislatures, if they deemed it proper to press the matter. He was only anxious to get an expression on this subject; and if indemnity could be obtained, that it might be devoted to the common school fund; and he trusted that the resolution would be referred.

And the question having been put on the adoption of the same, it was decided in the affirmative. The President announced the appointment of Messrs. King, Larrabee, and Root on said committee.

The resolution introduced by Mr. Pentony on the twenty-second instant, relative to separating the offices of clerk of the court and register of deeds, was then taken up.

Mr. Dunn remarked that the report of the judiciary committee separated the two offices, as would be seen on reference to it.

Mr. Judd moved to lay it on the table, which was agreed to.

The resolution introduced by Mr. Chase on the twenty-second instant, relative to the rights of persons, limiting the amount of land owned by citizens was then taken up. Mr. Judd moved to lay [sentence unfinished]. And the question having been put on the adoption of the same, it was decided in the negative.

The resolution introduced by Mr. Fitzgerald on the twenty-second instant, relative to the right of persons not attorneys to prosecute or defend suits, etc., was then taken up, when Mr. Fitzgerald asked leave to withdraw the same. Leave was granted.

The resolution introduced by Mr. Crandall yesterday, relative to giving the use of the hall for the purpose of lecturing, was then taken up, when Mr. Crandall asked leave to withdraw the same. Leave was granted.

The resolution introduced by Mr. Schœffler yesterday, relative to the mode of education in certain school districts, was then taken up. And the question having been put on the adoption of the same, it was decided in the affirmative.

The resolution introduced by Mr. Carter yesterday, relative to prohibiting judicial officers from power to appoint, etc., was then taken up, when Mr. Carter moved to lay the same on the table, which was agreed to.

The resolution introduced by Mr. O'Connor yesterday, relative to exempting certain lands from taxation, was then taken up. And the question having been put on the adoption of the same, it was decided in the affirmative.

The convention then resolved itself into committee of the whole for the further consideration of No. 1, article on the executive, Mr. Rountree in the chair.

Mr. Beall moved to amend the fifth section by striking out "1,500" (the salary of the governor) and inserting "1,000," and addressed the committee briefly in support of the amendment. The committee had agreed that the governor need not reside at the seat of government; and he had no doubt the patronage of the governor would be reduced to a mere bagatelle. His duties, therefore, would be very light; and he could see no good reason why he should have a large salary. Why should we pay officers more than they received in other states whose resources were far more abundant than ours? Why pay our officers more than similar officers received in New Hampshire and several other states? It was becoming the general policy of the states to affix to the office of governor short terms, low salaries, and to deprive them as far as possible of all patronage; and he believed it was the intention of this convention to adopt the same policy. The amendment was lost.

Mr. Wheeler moved to amend by striking out and inserting so as to require the governor to reside at the seat of government, and to fix the salary at $1,000. Lost.

Mr. Kinne moved to amend so that the salary should be such as might be provided by law, but not to be increased or diminished during his term. Lost.

Mr. Sanders moved to amend by striking out "1,500" and inserting "365," which he humorously remarked would be just one dollar per day. Lost.

The eighth section being read, Mr. Kilbourn moved to strike out in the second line the words "only a casting" and insert the word "no," so that it would read "The lieutenant governor shall be president of the senate, but shall have no vote therein." His reasons for offering the amendment were that by giving the lieutenant governor a casting vote it gave him an affirmative vote, while he would have no negative vote. Unless it were a tie vote, he could not vote at all. If it were a tie, the question without his vote would be lost at any rate; and his negative vote could not change the result. Hence, his vote could have only an affirmative effect. Lost.

Mr. Larrabee moved to amend that part of the sixth section which requires the governor to report annually to the legislature all cases of reprieve, commutation, or pardon of criminals, so as to require such report biennially. Mr. Lovell thought that was not the proper time to discuss the question of biennial sessions and hoped the amendment would not be pressed. Mr. Larrabee modified his motion so as to require such report to be made at the next session of the legislature after the occurrence of the cases. The amendment was rejected.

Propositions were then made to amend the tenth section so that a majority vote could pass a bill which had been vetoed by the governor.

Mr. Kilbourn was in favor of allowing a majority vote to overrule an executive veto. If the representatives of the people after hearing the objections of the governor to a bill still saw fit to pass it by a majority of both houses, he thought it should become a law, the governor's objections notwithstanding. Mr. Judd hoped the features of the section in this respect would not be changed. He had heard this question of the veto power discussed very fully and at different times. He heard it ably discussed in the last convention. He had heard it discussed in the New York legislature and he had read the controversy between Messrs. Clay and Calhoun in the United States Senate on the same subject, and he had become fully impressed with the importance and necessity of preserving the veto

power and strengthening it by requiring a two-thirds vote to pass a vetoed bill. He alluded to the important ends which had been secured by it in the operations of the federal government. But for that power we should now have had a United States bank; and whatever might have been the opinions of men at the time President Jackson vetoed the bank charter, there were but very few in this convention who would not admit that that was a most salutary measure.

Mr. Kilbourn argued that the veto power was under certain circumstances a very important power; but he considered it by no means as important in a state government as in the federal government. Very many and important differences might be pointed out, but he would not detain the committee with them. He would only remark that the interests in the hands of the federal government were far more momentous and diversified than those involved in a state government, having relation not merely to the rights and interests of individual citizens, but extending to those of sovereign states and embracing our relations with foreign countries. He had resided in a state where the veto power did not exist at all; and he had yet to learn that legislation in that state was not conducted as cautiously and as safely as in other states where the veto power existed. He was willing to recognize the veto power but wished to have it so that it could be overruled by a majority of all the members elected.

Mr. Chase spoke briefly in favor of the proposition, as being agreeable to the doctrine he held, that a majority should always rule.

Mr. Richardson thought it would be more safe to require a majority of all the members elected than two-thirds of the members present; for two-thirds of the members present might not be more than one-third of the members elected.

Mr. Lovell said he concurred in the doctrine that the will of the majority should be the law, but dissented from the proposition that the majority of the legislature was always the best exponent of the will of the people. The governor was elected by and responsible to them. In him the voice of the whole people could be concentrated and heard. The majority of the legislature might and frequently did represent a minority of the people. The assembly was the most numerous branch of the legislature; yet the senate would have an absolute negative on their action. The senate and assembly had

each the power to originate laws; but the veto power is only a negative power, and he thought that to secure the constitution from violation and to maintain the popular will the governor should be invested with some substantial restraint upon the action of the other coördinate branches.

Mr. Gifford thought the veto power a very important feature in a representative government and should be preserved and made effective. The executive department was not the only department of the government which was liable to corruption. There had been such things as corrupt legislatures and might be again; and he believed that corrupt legislation was not very uncommon. They might engage in schemes of legislation for the advancement of their own selfish interests, and he wished to preserve the veto power to meet such contingencies. He well remembered the time when Governor Tompkins of New York prorogued a corrupt legislature and sent them home. He wished by all means to impose a salutary check upon hasty or corrupt legislation; and this could be done only by preserving the veto power in effect as well as in name.

After a few remarks by Mr. Doran in favor of the majority rule, the question was taken and the amendment lost.

The committee then rose and by their chairman reported the same back to the convention with amendments. The amendments of the committee of the whole to said article were then concurred in.

Mr. Whiton moved to amend the first section by striking out the words "two years" and inserting in lieu thereof the words "one year." And the question having been put on the adoption of the amendment, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 29, negative 34; for the vote see Appendix I, roll call 12].

On motion of Mr. Judd the convention adjourned until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

The consideration of No. 1, article on the executive, was then resumed, when Mr. Beall moved to amend the same by striking out the fifth section and inserting in lieu thereof, "The governor shall receive during his continuance in office an annual compensation of $1,000." Mr. Lovell moved to amend the amendment by striking out "$1,000," which was disagreed to.

Mr. Estabrook said the committee reported a provision that the governor should reside at the seat of government. The convention had changed that feature of the question. If it had been the will of

the convention to compel the governor to reside at the seat of government, $1,500 would have been as small a sum as they could have asked him to take. If the governor was not required to reside at the seat of government, a salary of $1,000 would be sufficient, and he would therefore support the amendment.

Mr. Whiton said as he did not offer any remarks on this question in committee of the whole he might be indulged in making a remark here. He did not regard it as a matter of very great importance, but as the governor would not probably be required to reside at the seat of government, he thought that a salary of $1,000 would be sufficient. He considered it a very different matter from the salary of a judge, who would be obliged to devote his whole time to the duties of his office, while the governor, especially if not required to reside at the seat of government, might devote a large portion of his time to his private business. He would therefore vote for the amendment.

Mr. Jackson said he was in favor of the amendment but could not agree with the gentleman from Rock that it was a question of no importance. He thought it was a question of very considerable importance. Salaries should be proportioned somewhat to the duties and responsibilities imposed upon the officer. The labors likely to be laid upon the governor would be light. He would not be required to reside at the seat of government, he would not be burdened with the appointment of very many officers, and in view of all these circumstances he thought that a salary of $1,000 would be quite sufficient. The amendment was in his opinion of more importance, as the salary of the governor would be looked to as a guide in fixing the salary of other officers. He agreed, however, with the gentleman from Rock, that it should not be a guide in fixing the salary of the judges. The judges would be obliged to devote their whole time to their duties.

The question then recurred on the amendment of Mr. Beall, when Mr. Lovell called for a division of the question. The question was then put on striking out the fifth section, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 26, negative 38; for the vote see Appendix I, roll call 13].

Mr. Beall moved to amend the article by striking out the fifth section and inserting in lieu thereof: "The governor shall receive during his continuance in office an annual compensation of $1,250," which was decided in the affirmative. And the ayes and noes having been called for and ordered, those who

voted in the affirmative were [affirmative 37, negative 27; for the vote see Appendix I, roll call 14].

Mr. Larkin moved to amend section 1 by striking out all after the word "years" in the second line, which was agreed to. And a division having been called for, there were 34 in the affirmative and 16 in the negative.

Mr. Richardson moved to amend section 10 by striking out the words "two-thirds of the members present" wherever they occur and inserting instead thereof the words "a majority of all the members elected." Mr. Foot moved to amend the amendment by striking out wherever the following words may occur, "two-thirds of the members present," and inserting "a majority of the members elected," which Mr. Richardson accepted as a modification of his motion. The question was then put upon the adoption of the amendment as modified, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 27, negative 36; for the vote see Appendix I, roll call 15].

Mr. Richardson moved to amend section 2 by striking out the words "no person except a citizen of the United States" and inserting the word "any." And the question having been put upon the adoption of said amendment, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 11, negative 52; for the vote see Appendix I, roll call 16].

Mr. Lewis moved to amend the first section by inserting in the first line after the word "the" the word "supreme," which was disagreed to.

Mr. King moved to amend the second section by striking out all after the word "governor," which was agreed to.

Mr. Lovell moved to amend the third section by striking out the words "and lieutenant governor" and "or lieutenant governor" wherever they occur, which was agreed to.

Mr. Whiton moved to amend section 7 by striking out "lieutenant governor" and inserting "president of the senate." And the question having been put upon the adoption of said amendment, it was decided in the affirmative.

Mr. Larrabee moved a reconsideration of the vote by which the said amendment was adopted, which was disagreed to. And a division having been called for, there were 25 in the affirmative and 24 in the negative.

Mr. Gale moved that the article be laid upon the table, which was disagreed to.

Mr. Whiton moved to amend the article by striking out section 8 and inserting as follows: "If during a vacancy in the office of governor the office of president of the senate shall in any way become vacant or he be absent from the state, the secretary of state shall act as governor until the vacancy shall be filled or the inability shall cease."

Mr. Kilbourn moved to amend the amendment by striking out the words "secretary of state" and inserting the words "speaker of the house of representatives," which was agreed to. And a division having been called for, there were 31 in the affirmative and 9 in the negative. The question was then put on the amendment as amended, and was decided in the affirmative.

Mr. King moved to amend the article by striking out section 9, which was agreed to.

Mr. A. G. Cole moved that the article be recommitted to the committee with instructions to provide for the office of lieutenant governor.

Mr. Lovell said that by the article as it stood at present a person might hold the office of governor who was never voted for. This was manifestly opposed to the genius of our institutions and highly improper. An officer of that importance ought never to hold his place otherwise than by the popular will. The voice of the whole people should ever be expressed in his selection; and in case of his disability to discharge the duties from any cause, then his office should devolve upon a person who had been chosen with a view to such a contingency. For this reason he was in favor of the motion to recommit.

Mr. Harvey thought the contingency against which it was proposed to guard, in general, very remote. In the history of the states very few cases had arisen where the office of governor had been vacated by death or disability. He thought, therefore, that it was entirely unnecessary to go to the expense of providing an officer for that purpose without any duties, save a petty job of legislating as president of the senate. A majority of the states had discarded a lieutenant governor as unnecessary; and the public wish was manifestly opposed to it.

Mr. Judd said that the death or disability of a governor was far from being a remote contingency. Within his recollection several such cases had occurred. He was not willing to ask the people to ratify an instrument which did not provide against it. If the president of the senate or other officer was called upon to discharge these duties, it was in effect to take from the people for the time being the right to elect their own executive. He was in favor of electing a governor, lieutenant governor, and secretary of state; of assigning to each their respective duties, and thereby providing for all contingencies which could arise.

Mr. Gale said he came here to help frame a constitution which would give to the people the right to elect their own governor. He did not want this done by the legislature. We might as well go home at once as to make a constitution of this character. He thought the vote which had stricken out this provision was hastily given and that the sober second thought of the convention would yet set it right. He had voted that the governor receive a salary of $1,000 and he believed that was in accordance with the wish of his

constituents; at least, during the canvass on the old constitution he had heard no one say that it was too low. He claimed that members of the convention were as much instructed to go for the provisions of the old constitution that were satisfactory to the people as they were to go against those that the people disliked. Unless this course be adopted they would not make a constitution in accordance with the wish of their constituents. He would ask the honorable gentlemen if their constituents had objected to the provisions in the old constitution relative to the office of lieutenant governor. He believed that was one of the provisions that gave general satisfaction and he considered himself bound to sustain it. He could see many objections to the president of the senate or speaker of the house discharging the duties of the office of governor. They were not elected by the united voice of the people of the whole state, but only by one branch of the legislature. Again, circumstances might occur where the president of the senate had voted in the minority on the passage of a bill, when by the sudden death of the governor he would be placed in a situation where he could veto the same bill and send it back to the senate; and they would be unable to pass it for want of the two-thirds majority which had been agreed upon by this convention. They were making a constitution for the people; and he considered himself bound to disregard his own private views when they came in conflict with the expressed wish of his constituents. He hoped that the motion to recommit would prevail.

Mr. Kilbourn thought members had generally come here with their minds made up on this subject. His own opinion was against the creation of any such office. It was not necessary and could well be dispensed with. The Constitution of the United States had provided for a vice-president. Some of the states had imitated the example and elected lieutenant governors, but it did not follow that we should do so. While the Constitution of the United States was in the process of formation the question arose as to what title should be affixed to the office of vice-president. Dr. Franklin, with a view to giving his opinion of such an officer, proposed that he should be styled "His Superfluous Highness." Let us not, then, be led away by this precedent—a precedent which most of the states have not thought it wise to follow.

Mr. Beall thought the subject had assumed an importance which did not belong to it. It was a small matter either way, whether such an office was or was not created. He thought it quite probable,

however, that in case it was created, there were plenty of persons who would be willing to fill it.

The question on the motion to recommit was then taken, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 30, negative 32; for the vote see Appendix I, roll call 17].

Mr. Judd moved that the convention adjourn until Monday morning at ten o'clock. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 25, negative 37; for the vote see Appendix I, roll call 18].

The question was then put on ordering said article to be engrossed and read a third time, and was decided in the affirmative. And a division having been called for, there were 29 in the affirmative and 28 in the negative.

The President presented a communication from the secretary of the territory, containing an abstract of the census, which was read, when on motion of Mr. Kilbourn the convention adjourned.

SATURDAY, DECEMBER 25, 1847

Prayer by the Rev. Mr. Lord.
The journal of yesterday was read and corrected.
On motion of Mr. Featherstonhaugh the convention adjourned.

[Mr. Featherstonhaugh said he was absent from his seat yesterday on account of illness in his family; and he had been surprised to learn that a motion had been made to adjourn over till Monday and had been lost. He said there were persons in the convention who, if they did not wish to keep the twenty-fifth day of December sacred, at least wished to do as they pleased on that day. He therefore moved that the convention adjourn, which was agreed to, and the convention adjourned until Monday morning.—*Tri-Weekly Express*, Dec. 25, 1847.]

MONDAY, DECEMBER 27, 1847

Prayer by the Rev. Mr. Fox.

The journal of Saturday was read.

Mr. Brownell, from the committee on general provisions to whom had been referred the subject of boundaries of the state, made the following report, dissenting from the report of the majority of the committee, which was read, to wit:

BOUNDARIES

"The undersigned, a minority of the committee on general provisions, to whom was referred with other matters the subject of the boundaries of the state of Wisconsin, respectfully dissents from the conclusions at which the majority of said committee have arrived in the article on boundaries, heretofore reported by them to the convention, and submits the following reasons for said dissent:

"By the act of Congress for the admission of Wisconsin into the Union the northwest boundary of the state followed the main branch of the St. Croix River to the intersection of that stream with the Mississippi. This boundary was so altered by the convention to form a constitution, which sat at Madison last year, as to bring the line some fifteen miles east of the one fixed by Congress, throwing the valley of the St. Croix into the new territory. Both the act of Congress and the decision of the last convention are a departure from the terms of the Ordinance of 1787, and from the act for the division of the Indiana territory, approved January 11, 1805, which defined the boundaries of the fifth state in the Northwest Territory to be: on the west, the Mississippi River; on the north, the boundary line between the United States and Great Britain; on the east, a line drawn through the centre of Lake Michigan to the northern extremity of said lake, and thence due north to the northern boundary of the United States; and on the south, a west line drawn through the southerly bend of Lake Michigan to the Mississippi River. Without stopping to argue the question as to the propriety of this departure from the Ordinance of 1787, it is sufficient to remark that the action of Congress and the vote of the last convention equally indicate a disposition to divide the territory of Wisconsin into two parts. The question as to the most proper location of the dividing line is the only one which the undersigned proposes to discuss.

"As before remarked, Congress has made the main channel of the St. Croix River the dividing line, while the last convention proposed to sever it fifteen miles farther eastward. The majority of the committee, differing with both Congress and the last convention, have reported in favor of throwing the line some fifty-five miles farther to the northwest. To all these propositions the undersigned and those whom he represents have serious objections.

"The first line, that adopted by Congress, divides the settlements along the St. Croix, which are identical in interest and closely connected by business and other relations, into two portions, retaining one within the limit of Wisconsin and transferring the other to the new territory of Minnesota. This line would be in all respects an unnatural and inconvenient one, severing those

whom association has joined together, establishing different jurisdictions on the opposite sides of the same stream, and opening the door to conflicting legislation and clashing interests. Of the three lines proposed, this would be the most obnoxious to the people of the St. Croix valley.

"Nor would the plan of carrying the boundary line fifty or sixty miles northwest of the St. Croix to the mouth of Rum River be much more acceptable. It would indeed keep the settlements of the St. Croix together, but it would attach them to a government from which, by reason of the distance which intervenes between the settlements and the capital, they could derive but little advantage. The principal settlements on the St. Croix are nearly two hundred and fifty miles above Prairie du Chien and some four hundred miles from Madison, the seat of government in Wisconsin, to say nothing of the still greater inconvenience to the people living on the south shore of Lake Superior. In the spring, summer, and fall access is obtained to the settlements on the St. Croix by the Mississippi; in the low stage of water the navigation is greatly obstructed, and the transportation of passengers and goods is rendered difficult, tedious, and expensive. During the winter season—say for more than four months in the year—this avenue is closed, and the inhabitants of the valley of the St. Croix are in a good measure cut off from all communication with their fellow citizens in the southern and thickly settled portions of Wisconsin. There is no road on either side of the Mississippi leading to the St. Croix country, and there is no probability of one being made for some time to come. The country intervening between the St. Croix and Black rivers, a distance of one hundred and forty miles, is of a forbidding character. Except in the immediate valleys of the streams there is but little good land, while pine barrens, tamarack swamps, and innumerable marshes and lakes cover the face of the country and render the prospect of settlement remote and doubtful. This broad belt of waste land constitutes a barrier almost impassable between the settlements on the St. Croix and the nearest ones in Crawford County. Is not the simple statement of this fact sufficient to show the impropriety, not to say injustice, of attaching the St. Croix country to Wisconsin? Is it reasonable to ask the inhabitants of that remote region to come under the rule of a government from which they are so distant that they can take but little interest in its concerns and derive but little benefit from its protection? In further illustration of this point the undersigned respectfully refers to the report herewith submitted of a select committee of the constitutional convention on the subject of boundaries.

"It remains to speak of the third line, which is the one proposed by the late convention. The principle which led to the adoption of this line, viz., the desire to consult the wishes and convenience of the people along the St. Croix valley, meets with the hearty concurrence of the undersigned. But in conformity to the views of those whom he represents he would respectfully propose to bring the line still farther to the eastward, by which, while no additional settlements or population of great amount would be cut off from Wisconsin, a more convenient line would be adopted for the division of our territory into two states. A very strong, and as it seems to the undersigned, a conclusive argument in favor of the proposed change, is to be found in the fact that its adoption would leave population and territory enough on the north

and west of Wisconsin to form in a very few years another state; while if the line of Rum River, as proposed by the majority of the committee, or of the St. Croix River, as prescribed in the act of Congress, should be agreed upon, a long period must elapse before the settlements would be sufficiently numerous to warrant the establishment of another state on our northwestern border.

"With these remarks, the undersigned earnestly recommends that the northwestern boundary of Wisconsin should commence in the channel of the Mississippi River, directly south of the highest peak of Mountain Island, which according to Nicolet's map is about where the forty-fourth degree of latitude crosses the Mississippi; thence due north half a degree; thence on a direct line northeasterly to the headwaters of Montreal River, striking said headwaters at the same place as marked upon the survey made by Captain Cram; thence down the main channel of Montreal River to the middle of Lake Superior.

"All of which is respectfully submitted. G. W. BROWNELL

"MADISON, December 27, 1847."

REPORT OF COMMITTEE RELATIVE TO DIVISION OF THE STATE

"The select committee 'to inquire into the expediency of dividing the territory of Wisconsin, and locating such line of division as shall equitably divide the same into two states' have had the same under consideration and respectfully report that in their opinion the territory of Wisconsin should be equitably divided for the following principal reasons: first, the large extent and peculiar shape of the territory and the consequent inequality in the benefits of government; second, the late act of Congress, dated August 6, 1846, dividing the same; third, the present unequal representation in the Senate of the United States.

"Your committee have found in examining the subject that the area included within the present undisputed limits of Wisconsin Territory may be estimated at about 90,000 square miles; and is about as large as New York and Pennsylvania together; and the length of the same entirely disproportioned to its breadth, averaging about 200 miles wide and some 600 or 700 miles long.

"The present population in the vicinity of the west end of Lake Superior and the settlements now forming immediately south of the same, continuing to the Mississippi River, are greatly inconvenienced on account of the distance from the seat of their present legislature, and so far as distance is concerned, without a parallel in the history of any of the states in this Union; the north is, therefore, liable to great injustice by the legislature passing laws touching their interests before it could be possible for the inhabitants of that region to get any information on the subject and have sufficient time to exercise the inestimable right of petition or remonstrance within the ordinary time of any session of the legislature. That a large proportion of the territory located between the Wisconsin and Chippewa rivers, a distance of nearly 150 miles, is broken and undesirable for cultivation and settlement, which renders it probable that the facilities of a speedy winter communication between this sec-

tion of country and the remote settlements of the northwest cannot be had for many years—the great barrier, etc. of distance forbids the equal distribution of the benefits and privileges of state government now to be formed and renders them almost worthless to the inhabitants of that region.

"The late act of Congress defining the northwest boundary line, commencing at the first falls in the river St. Louis west from Lake Superior and running due south to the St. Croix and down the channel of the same to the Mississippi River, is highly objectionable to the inhabitants of the valley of the St. Croix River, as it places the settlements under different governments, alienates the common feeling of interest in society, and gives concurrent jurisdiction to the legislatures of different states in regulating all the improvements in the river requiring chartered privileges—whose conflicting interests are so multiplied that even the legislature of one state might not control, reconcile, and restrain them; and if resort could be had to two, great advantage may be taken of each other by individuals, a wide door opened to litigation, and the inhabitants on the different sides of the river arrayed and exasperated against each other.

"The late act of Congress, however, has this favorable effect with the committee, in that it has manifested a disposition to divide the present territory of Wisconsin, which division, without consent of parties, under the Ordinance of 1787 your committee have doubted could be made; but the area intended to be included by the act is so extended to the north and west that your committee, independent of the other objections, think the line of division improperly located and unequitable, cutting off the territory on the southwest from any commercial point or advantage at the west end of Lake Superior, to whom it naturally belongs even if the line established by Congress should remain unaltered. And it also includes within the limits of the state all of the east shore of the river Mississippi to very near the head of uninterrupted steam navigation, so that the territory northwest of the St. Croix River has its permanent commercial advantages confined to a very circumscribed limit on the east bank of the Mississippi, and cut off entirely on the south shore of Lake Superior; while, on the other hand, within the limits of the state the principal commercial points of the south shore of Lake Superior and the upper Mississippi are retained; but so remote are these sections of country from the seat of government of the respective states that they are beyond the reach of its equal benefits. Therefore both justice and equity require that a more southerly line than that specified in the act of Congress should be adopted.

"Your committee have considered it a matter of deep importance, if by a hasty entrance into the Union the many millions that are in all human probability to inhabit this territory in future should be compelled to commit the representation in the Senate of the United States to two Senators, which are all that one state is entitled to; and as the limits of the whole are capable of sustaining a population equal to that of two large states, your committee have been greatly influenced in favor of dividing the territory on that account. They have also had a deep sense of the unequal representation now in the Senate of the United States from the different states in the Union, as compared with the representation in the lower house of Congress, the latter being

based upon an equal ratio of population in all the states, while the Senate has the same representation from every state, however large or small. For instance, the six New England states have twelve Senators and thirty-one Representatives, with an area in the aggregate of 65,310 miles, according to Malte-Brun; while New York and Pennsylvania, with an area of 90,150 miles have four Senators and fifty-six Representatives. Although the five states located in the Northwest Territory by the Ordinance of 1787 may not now be as much out of proportion in their representation in Congress as New York and Pennsylvania are with the New England states, yet the time is rapidly approaching when they may be, as the representation from the new states in the lower house of Congress is continually increasing, while that in the Senate remains the same. Therefore the importance of the new states entering the Union as nearly uniform in size as may be practicable; and for the information of those who may not be informed on the subject, is herewith annexed a schedule of most of the states in the Union, exhibiting the comparative size of each.

"Your committee, after mature deliberation taking into view the variety of soil, surface, and resources, generally, do recommend that the line dividing the territory of Wisconsin should commence in the channel of the Mississippi River, directly south of the highest peak on Mountain Island, which according to Nicolet's map is about where the forty-fourth degree of latitude crosses the Mississippi; thence due north a half-degree; thence on a direct line (northeasterly) to the headwaters on Montreal River, striking said headwaters at the same place as marked upon the survey made by Captain Cram; thence down the main channel of Montreal River to the middle of Lake Superior.

"All of which is respectfully submitted,

WILLIAM HOLCOMBE, Chairman"

AREA OF THE SEVERAL STATES BY MALTE-BRUN

	sq. mi.		sq. mi.
1. Maine	32,000	17. Mississippi	43,350
2. New Hampshire	9,280	18. Louisiana	48,000
3. Vermont	10,200	19. Tennessee	41,300
4. Massachusetts	7,800	20. Kentucky	39,000
5. Rhode Island	1,360	21. Ohio	38,500
6. Connecticut	4,670	22. Indiana	36,250
7. New York	46,200	23. Illinois	49,000
8. New Jersey	6,900	Illinois, in dispute	10,000
9. Pennsylvania	43,950	24. Missouri	60,000
10. Delaware	2,060	25. Michigan	38,750
11. Maryland	10,800	Michigan, in dispute	
12. Virginia	64,000	26. Arkansas	
13. North Carolina	43,300	27. Florida	
14. South Carolina	30,080	28. Texas	
15. Georgia	58,200	29. Iowa	
16. Alabama	50,800	30. Wisconsin	

Mr. Whiton moved that 150 copies of the majority and minority reports be printed, which was agreed to.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed article No. 1, on the executive.

Mr. Judd moved that leave of absence be granted to Mr. Featherstonhaugh. Leave was granted.

Mr. Chase introduced the following resolution, which was read, to wit: "*Resolved,* That the use of this hall be granted to H. H. Van Amringe this evening at seven o'clock, to deliver a lecture on the subject of national, political, and legal reform," and moved that the rules be suspended for the adoption of said resolution now, which was disagreed to. And a division having been called for, there were 29 in the affirmative and 17 in the negative.

The resolution introduced by Mr. Fenton on the twenty-fourth instant, relative to the adjournment of the convention until Monday next, was then taken up, when Mr. Fenton asked leave to withdraw the same. Leave was granted.

The resolution introduced by Mr. Carter on the twenty-fourth instant, relative to restricting the legislature of the state, was then taken up. And the question having been put on the adoption of the same, it was decided in the negative. And a division having been called for, there were 17 in the affirmative and 22 in the negative.

The resolution introduced by Mr. Vanderpoel on the twenty-fourth instant, relative to the exemption of a homestead, was then taken up. And the question having been put on the adoption of the same, it was decided in the affirmative. And a division having been called for, there were 25 in the affirmative and 13 in the negative.

The resolution introduced by Mr. Richardson on the twenty-fourth instant, relative to the exemption of certain property from taxation, was then taken up. And the question having been put on the adoption of the same, it was decided in the affirmative.

The resolution introduced by Mr. Lewis on the twenty-fourth instant, relative to requiring the details of laws to be in accordance with their titles, was then taken up. And the question having been put on the adoption of the same, it was decided in the affirmative.

The resolution introduced by Mr. Harvey on the twenty-fourth instant, relative to restricting the legislature, was then taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

The resolution introduced by Mr. Carter on the twenty-fourth instant, relative to prohibiting members and other persons from smoking in this hall, was then taken up, when Mr. Fenton moved to amend the resolution by adding the words "during the sitting of the convention," which was accepted by Mr. Carter as a modification of his resolution. The resolution as modified was then adopted.

Mr. Harrington introduced the following resolution, which was read, to wit: "*Resolved,* That the committee on the executive, legislative, and administrative provisions be and they are hereby instructed to inquire into the expediency of adopting a section into the constitution depriving forever the legislature from abolishing capital punishment."

No. 1, article on the executive, was then taken up, when Mr. Lovell moved to recommit the article to committee No. 2, with instructions so to amend it as to provide for the office of lieutenant governor and to prescribe his duties.

Mr. Estabrook said he saw indications that it was the intention of some members to retrace their steps on this question by inserting a provision providing for the office of lieutenant governor. As for himself, he had the same objections on this subject as before. He regarded such an officer as entirely superfluous. To create the office was to provide for a contingency which in the ordinary course of things might not happen in one hundred or five hundred years or never. During the debate had on the question the history of the states had been ransacked, and only three cases of vacancy by death or other cause had been found, and but one in the general government. In some of the states the constitutions provided that the governor should be designated as "His Excellency," and he thought that if the office of lieutenant governor was to be created, he should be styled "His Contingent Excellency" or "His Superfluous Excellency," as proposed by Dr. Franklin in the debate on creating a vice-president of the United States. A lieutenant governor was at best a mere minuteman—an officer without duties, save as president of the senate. He saw no good reason why these duties could not as well be performed by a president of that body duly elected by its members; and in case of vacancy in the office of governor, providing that the secretary of the territory should issue a proclamation for an election to fill the vacancy, provided an incumbent was deemed necessary.

Mr. Beall would not turn his hand over to secure a lieutenant governor. He did not like that feature which provided that he should receive double mileage and per diem pay. If that was properly settled, however, he would have no objections to creating the office. A contingency might occur in which his services would be highly necessary; and he was in favor of providing for all contingencies that might occur, and therefore, on the whole, he was in favor of having such an officer.

Mr. Gale moved to amend said motion by adding "and with instructions to report an annual salary for the governor of $1,000." And the question having been put upon the adoption of the amendment, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 24, negative 32; for the vote see Appendix I, roll call 19].

Mr. Whiton moved to amend the motion by adding the following, to wit: "Also to strike out the words 'two-thirds of the members present' when they occur in the tenth section, and insert in place of the words stricken out the the words 'a majority of the members elected.'"

Mr. Whiton thought the action of the convention when the subject was before under consideration was hasty and without due deliberation. As the article at present stood, in case of a veto by the governor, nothing less than a vote of two-thirds of both branches of the legislature could pass a bill. In practice such a vote was rarely or never to be obtained. He had had some experience in the business of legislation and had found that very seldom could such unanimity be expected as to ensure the passage of a bill when returned by the governor with his objections, if it could be passed only by a vote of two-thirds. And if gentlemen will recur to the votes which have been taken in the convention they will find that no important measure has been passed by this body by such a majority. The practical effect, then, of the veto power as contained in the article was to render the negative of the governor absolute.

The veto power in any form, in his opinion, was of questionable utility. It was a monarchical provision, borrowed from England; and its introduction into the constitution of the United States had been done in consequence of the fears of some of the members who framed that instrument of the popular will. As there adopted it was greatly modified in its operation, so that a bill might pass by a two-thirds vote in opposition to the will of the executive.

Whatever might be thought of it in the Constitution of the United States, he was clearly of the opinion that its adoption here, at least to that extent, was wrong. The powers of the governor should be very limited. It was making a large stride to permit him by his single will to prohibit the action of the legislature—to annul their doings—and thus defeat the wishes of the immediate representatives of the people. If such a provision was to be incorporated at all it ought to be in the mildest form, still leaving the power and the responsibility in the legislature. It was not in an apprehension that the power would be often abused that he grounded his opposition, but in the dangerous tendency of the power itself. It was a prerogative of the English crown—a one-man power—uncontrolled by any other consideration than mere caprice and a regard for the responsibility of its exercise. It was making the voice of one man supreme in opposition to the expressed will of a large body, acting upon their own sense of propriety and under equal responsibility.

Gentlemen who had taken an opposite view had argued from particular cases. They had approved of the vetoes of Jackson and

Tyler because the results had met their approval. But suppose the result had not met their approval. Would they then have been in favor of it? Are gentlemen in favor of the veto of the harbor bill by the present president? Arguments based on such grounds were erroneous, on whichever side used. They were isolated cases; and he had barely alluded to them to show that no general principle could be extracted from them.

It had been said that this power would check hasty legislation. But there were two houses of the legislature, each of which had a negative on the doings of the other. Every bill must get a majority in both branches before its passage; and this was the greatest and most certain preventive of hasty legislation. When the bill had once passed, it was sent to the governor for his signature. If he approved, he would sign it. If not, it would be returned with his objections, and then, if the majority still saw fit to sanction it, it should become a law. This in his view was a sufficient check to place in the constitution of Wisconsin, and if it was to be incorporated at all, it should be in this modified form. He was willing to trust the executive with the power of interposing a check to hasty legislation; but he was unwilling to give him the power to prevent the will of the immediate representatives of the people from being carried into effect. Gentlemen who were in favor of the exaltation of the veto power as it appeared to him sought to reverse the proper order in the state and to "poise our political pyramid upon its apex." He was in favor of building upon the broad basis of the popular will, as expressed by the representatives of the people, giving the executive only the power to prevent haste in legislation, by causing the legislature to reconsider the matter.

Mr. Judd thought that the principle had been very fully discussed on a former occasion and a decided majority of the convention had determined in favor of retaining the veto power. But it would seem from the remarks of the gentleman from Rock that it was not so. He would have them believe that a majority of the convention was opposed to the veto power in any shape. If the representatives of the people did their duty, the veto power under the amendment would amount to nothing at all. It was the duty of every senator and representative to be in his seat at all times during session hours; and allowing a majority of all the members elected to overrule a veto was little else than allowing a majority of the members present to do the same thing. They would hold out

a semblance of the veto power, which practically would amount to nothing at all.

As he remarked in committee of the whole, he had heard this question fully discussed at different times and in different places. The gentleman from Rock could not be ignorant of the fact that this question had been fully discussed in the last convention. He could not be ignorant of the fact that it had been often and ably discussed in New York, from 1821 down to 1846. It had been discussed in their conventions and in their legislatures, and after all their discussions they had retained the veto power and the two-thirds rule. If the veto power existed at all it should amount to something. It should exist not only in name but in reality. It should be made capable of subserving the purpose for which it was intended—a check upon hasty and corrupt legislation.

The veto power had been denominated a prerogative of the British crown and a thing which should have no place in a republican constitution. He contended that the cases were very different. The veto power as it existed in this country could only operate and was only intended to operate as a check upon legislation. The prerogative of the British crown in this respect amounted to a total prohibition upon legislation. If the crown vetoed a bill passed by parliament, nothing further could be done in the premises; that was the end of the question. The veto of the crown was not a check, but an inhibition. No one, he presumed, wished to confer upon the governor any such power. The friends of the veto power here only asked that it should be made a check upon legislation.

Gentlemen had argued that a majority should rule and therefore the veto power should not exist. Admit the principle that the majority should rule. And what then? A representative body did not always represent a majority of the people. It often happened that the governor was elected by a large majority, by one party, while at the same election the opposite party elected by very small majorities a majority of the legislature.

Thus the governor would represent the majority, and the legislature the minority. Nothing was more common in the election of representatives than for A to receive a greater number of votes than B and C for the same office and so be elected, while B and C together had a majority of all the votes cast. It was obvious in such cases that the representative represented a minority and not a majority. There was, therefore, no certainty that either house or

that both together would represent a majority of the people; while the governor of necessity must represent the majority.

The gentleman from Rock had pointed out one example in which the exercise of this power by the President of the United States had not been well received in this territory. But this was an isolated instance and should not be allowed to outweigh the many instances of its beneficial influence as exercised by Presidents Jackson and Tyler. It was indeed a power which was liable to abuse, but still a power which he believed could not be dispensed with, with safety to the public interests.

Mr. Gale said he was surprised to see gentlemen urge the two-thirds rule and claim to be Democrats. He considered the veto power, under the two-thirds rule, directly in opposition to one of the great fundamental principles of our government, that the majority should rule. The gentleman from Rock (Mr. Whiton) had correctly stated that the veto power was a prerogative of the crown of England. It was first adopted in this country in the constitution of the state of Massachusetts, and subsequently by the influence of Federalists it was forced into the Constitution of the United States. He would admit that ten states in addition to Massachusetts had adopted the provision that a two-thirds majority should be necessary to overrule the veto. But the amendment of the gentleman from Rock was neither a new nor a novel idea. It had been adopted and had become a prominent feature in ten of the states of the Union. Kentucky incorporated it into her constitution as early as 1799; Indiana in 1816; Illinois and Connecticut in 1818; Alabama in 1819; Vermont and Arkansas in 1836; Florida in 1838; New Jersey in 1844; and the state of Missouri first in 1820 and subsequently on the revision of their constitution in 1846. In eight of the states, viz., Tennessee, Ohio, Virginia, Rhode Island, Delaware, Maryland, and North and South Carolina, the veto power has been repudiated in toto.

He claimed that the authority of precedent in the Union was decidedly in favor of the amendment. He said the gentleman from Dodge (Mr. Judd) had claimed that the veto power had never been abused, but at the same time had admitted that the present executive of the United States had exercised that power to the manifest injury of the great interest of the West in the veto of the river and harbor bill. He could see but little difference between the abuse of that power and its exercise to the manifest injury of the

great body of the people of the United States. He said that gentlemen need not go out of the territory of Wisconsin to get a fair illustration of the veto power. From the twenty-second day of March to the seventeenth of April, 1843 some ten vetoes were sent into the two houses, and all he believed, except one, were overruled by upwards of a two-thirds vote. He did not know whether the governor or legislature was right in those particular instances, but he was decidedly opposed to the governor's being invested with such supreme power over the people's representatives. He would call the attention of the gentleman to the veto of the governor of Missouri not long since that was overruled by a nearly unanimous vote of the legislature. Such instances might not be an abuse of the veto power, but he thought that gentlemen would be unwilling to draw a distinction. He was in favor of democratic principles but did not wish to be understood as being in favor of such democratic principles as advocated and practiced by the gentleman from Dodge (Mr. Judd). He was opposed to the principle that this prerogative of the crown of England should be engrafted upon our republican constitution and hoped that the amendment would prevail.

The question was then put on the adoption of the amendment, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 31, negative 27; for the vote see Appendix I, roll call 20].

The question was then put on the motion as amended, and was decided in the affirmative. And a division having been called for, there were 26 in the affirmative and 24 in the negative.

The convention then resolved itself into committee of the whole for the consideration of No. 2, article on the administrative, Mr. Dunn in the chair.

Mr. Chase moved to amend the first section of the article so as to make the secretary of state, etc. elective at the times and places of choosing members of the legislature. Mr. Judd suggested that the house would probably be elected annually and the senate biennially; and if the amendment of the gentleman from Fond du Lac should prevail, it might leave the question in some doubt whether these officers were to be elected annually or biennially. Mr. Chase replied that if there was an annual election for members of the legislature, these officers would be elected annually of course (should the amendment prevail), no matter whether such election should be held for one or both houses of the legislature. He hoped the convention would not, because they had provided that the governor

should hold his office for two years, provide the same term for the other officers of the state.

The amendment was adopted.

Mr. O'Connor moved to strike out the fourth section that part which authorized the governor to remove any officer provided for in that section (sheriffs, coroners, etc.). Messrs. Lovell and King spoke briefly in favor of conferring on the governor the power to remove these officers for cause. Mr. Doran admitted the necessity of vesting such a power somewhere, but preferred that it should be vested in the district court and hoped the mover would modify his amendment accordingly.

After some further discussion by Messrs. Whiton, Lovell, King, and Larrabee, the question was taken on the amendment and lost.

Mr. Whiton moved to amend the third section so as to empower the governor to remove the treasurer from office in case of malfeasance therein, and argued the necessity of some provision of this kind from the fact that the treasurer would be entrusted with all the funds of the state, and before he could be reached by impeachment or other legal process irreparable injury might be done.

Mr. Doran was opposed to placing any such power in the hands of the governor except in cases of absolute necessity. The governor might himself be a corrupt man, and liable to impeachment, and might remove the treasurer on purpose to throw the whole government into confusion and embarrass its operations. The treasurer should and no doubt would be required to give ample security; and he would prefer relying on his security to investing the power of removal in the governor.

Mr. Estabrook thought they were encroaching too much upon the business of ordinary legislation. The convention could not provide in detail how, by whom, and for what causes officers should be removed; and he gave notice that if this amendment should not prevail, he would offer one to the effect that officers might be removed in such manner as might be provided by law. Mr. Chase preferred the amendment suggested by the gentleman from Walworth (Mr. Estabrook) and should support it, if offered.

The question was taken on the pending amendment and lost.

Mr. Estabrook then offered his amendment. Mr. Judd said the committee which reported the article did not think the governor ought to have the power of removing any one of the state officers; and he doubted whether such a power ought to exist anywhere; but

if it was deemed necessary, he would prefer that it should be regulated by the legislature, as contemplated by this amendment. The amendment was rejected.

Mr. Chase moved so to amend the fourth section that sheriffs, coroners, and district attorneys should be chosen annually instead of biennially. The amendment was lost. And a division having been called for, there were 20 in the affirmative and 29 in the negative.

The committee then rose and by their chairman reported the same back to the convention with an amendment.

The amendment of the committee of the whole to said article was then concurred in.

The question was then put on ordering said article to be engrossed and read a third time, and was decided in the affirmative.

On motion of Mr. Jackson the convention adjourned until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

The convention resolved itself into committee of the whole for the consideration of No. 3, preamble [and declaration of rights], Mr. Case in the chair.

Mr. Gale moved to amend the third section by striking out the word "indictment" and also the words "and was published for good and justifiable ends," which was not agreed to. Mr. Whiton moved to strike out of the twelfth section the word "validity" and insert "obligation," which was agreed to. Mr. Beall moved to amend by striking out the fourteenth section and inserting the following: "Foreigners who are or may hereafter become residents of this state shall enjoy the same rights in respect to the possession, enjoyment, and descent of property as native-born citizens."

Mr. Beall remarked that the convention would observe upon reading the amendment that it would place aliens upon the same footing in respect to the possession, enjoyment, and descent of property as native-born citizens. The section as reported and which this was designed to supersede would deprive foreigners who had not filed their declarations of intention, of their rights. Such a provision he believed both impolitic and unjust. It would be depriving foreigners of the most essential privilege that freemen could enjoy and must operate as a severe check upon immigration. Although it was not strictly decorous to refer to the action of the com-

mittee which reported the provision, of which he was one, yet he would say that he had hitherto opposed it, as he did here. He believed it to be worse than the English system, as even there aliens might hold, enjoy, and devise real estate as against everyone else but the crown. For this reason he submitted his amendment, in full confidence that the convention would accept of it or a similar provision.

Mr. Martin suggested to the mover a modification of his amendment to the effect that there should be a continued residence to entitle them to hold lands.

Mr. Kilbourn said that as reference had been made to the previous action of the committee on this question, he would state that various difficulties had suggested themselves in agreeing upon the form of the article. It was admitted that foreigners ought to be permitted to purchase lands if they saw fit; that many of them might wish to settle their sons in this new world or make such disposition of their property as they thought proper. But it was argued adversely that if the door was left wide open a foreign prince might purchase large tracts of lands and withold them from market, to the great detriment of the citizens of this country. After hearing the subject fully discussed, a majority of the committee had concluded that a proper medium to establish was the section as proposed.

Mr. Beall in reply said he well recollected the debate had on this very question in the last convention. The article as then drawn was taken from the ordinance and law of Congress; and if gentlemen would take the trouble of examining they would see that residence was made a qualification for the acquisition and descent of property. The proposition, if adopted, he did not believe to be in accordance with the laws of the United States. Under them, foreigners could go to the land offices and enter such tracts as they chose, and the provision could not interfere with it. But its subsequent operation would be to clip their rights to hold. For this reason it was opposed to the policy of the general government, and he believed it to be in the face and eyes of the ordinance. Suppose a foreigner comes here and enters land, and the next day should deed it away and die. In whom would the title vest? In the state? Most assuredly. And he put the question to members to decide. Was that just? He did not so regard it, but thought it a gross violation of individual right.

Mr. Schœffler was in favor of the amendment proposed by the gentleman from Fond du Lac (Mr. Beall). The provision on this subject in the old constitution he believed had met with the entire approval of the foreign population, and he thought the proposed alteration was in opposition to the laws of the Union, if not to positive treaty stipulations—and was certainly opposed to the liberal and enlighted policy of the age. Foreigners came here mostly to find homes—to stay permanently—and no reason existed, in his view, for changing their position with respect to present citizens in so very important a particular.

Mr. Sanders, in reply to the allusion made to the action of the committee, stated that the article as proposed was drawn up by foreigners on that committee. They had themselves urged as a reason for the alteration of the article from that contained in the last constitution that their countrymen had every inducement held out to them to come here, but none whatever to become citizens. It was for the purpose of requiring them to become such that the alteration was made. It was designed especially for their own benefit, to make them renounce their allegiance to the country from which they came and to take the oath of allegiance to our own government—in a word, to Americanize them and make them citizens.

It had been remarked that the provision would interfere with the primary disposal of the soil. That he regarded as an error. When lands were once purchased from the government, the right passed to the purchaser and of course became the subject of control by the state. It was a mere conventional right which the state had full power to regulate. On the contrary, suppose the amendment to prevail. What guarantee have we that the grandees of Europe would not come in and monopolize our very best lands? That they would not actually crowd our own hard-working and industrious citizens from the market? He cited the case of a large purchase in Grant County by a foreign noble as an example of what we might expect, and argued that we had a right to require the residence and service to the owners of our soil as a return for the protection extended to their property.

Mr. Beall replied that his amendment provided for just such cases as that in Grant County. It required residence as a prerequisite to purchasing and holding real estate—and had been drafted from the ordinance and laws of Congress.

Mr. Gale said that the effect of the section as reported by the committee was to deprive a foreigner of the privilege of conveying his land or transmitting it to his children or heirs until after he had declared his intentions to become a citizen of the United States according to the act of Congress upon that subject. He considered this would be extreme injustice to those who had left their foreign home to settle upon the soil of Wisconsin. The organic act and the present laws of Wisconsin had held out the inducement to foreigners to possess, enjoy, and transmit real estate, and he was decidedly opposed to any alteration to the contrary. The gentleman from Racine (Mr. Sanders) had argued that it was policy to compel foreigners who resided among us to become citizens, that they might be forced to serve in the army in case of war, but he thought that the bloody fields of Mexico were sufficient evidences to satisfy anyone that no compulsion was necessary and that men of foreign birth residing among us had been as ready to volunteer to fight our battles as native-born citizens. It is claimed that the gentleman from Racine (Mr. Reymert) had penned the section and was in favor of its adoption, but he feared that the gentleman did not clearly understand its effects. Was he willing that if a Norwegian should come with a numerous family and invest his all in a quarter-section of land, and should then die, that land should revert to the state of Wisconsin, and his children be thrown upon the world without a dollar to assist them in procuring the comforts of life? Such was the effect of the section, and numerous instances would soon show such hardships unless the section was amended.

Mr. Whiton concurred in the opinion that the provision reported by the committee was opposed to the ordinance and laws of Congress. When a foreigner once obtained his title at the land office it was as good a one as any native-born citizen could get; and the state had no right to interfere with such bona fide purchaser. If we adopt the fourteenth section as reported, foreigners abroad cannot purchase. But suppose it is done by a resident agent, and in his name. Is it not saying he shall not enjoy the rights of a citizen of the United States? At any rate, it is not dealing with him in good faith to put such restriction upon him. For this reason he was opposed to the provision and also to the proposed amendment, as not sufficiently comprehensive. It was too limited in its application and confined the right of purchase merely to residents. An amendment which should be in accordance with the spirit of the ordinance

and extended enough to secure every right there bestowed would meet with his approbation.

Mr. Lovell said that he thought it was of very little importance whether the section was retained or not. Some objection had been made by foreigners in his part of the territory to the section in the last constitution, on the ground that no person should be entitled to the protection of the government, at all events and under all circumstances, who did not own allegiance to the state. It might be better to leave the matter entirely out of the constitution. The class of persons intended to be benefited by the section he thought would be entirely safe without it. As to so much of the Ordinance of 1787 as relates to the primary disposal of the soil, it had in effect received a judicial construction in the well-known Beaubien case in the Supreme Court of the United States; the court decided that after the title had passed from the United States, the state institutions had exclusive control of the subject. The ordinance did not stand in the way of the action either of the convention or of the legislature, if left to them.

Mr. Judd said he had no particular feelings in the matter, yet was of opinion that if the provision were adopted as reported, it would work injustice. Foreigners are and will continue to be daily buying and selling lands; and he presumed that he had personally witnessed forty such transfers within the past six months. If now it was declared that only those who had already become citizens should hold their lands, the effect would be to rip up, nullify, and destroy all contracts of this kind. He could never consent to any such thing and therefore should vote for the amendment.

Mr. Chase said he had heard no good reason as yet either for the original provision or for the proposed substitute. Both were mere legislative details, having no appropriate place in the constitution; and he trusted both would be stricken out.

Mr. Doran remarked that his intellect was not so obtuse as not to discover any arguments in all that had been said. He had heard weighty and good ones on both sides. His own opinions, however, remained unchanged. He believed it to be an act of charity to have a provision in the constitution, the effect of which would be to compel foreigners to become citizens. Such a provision would not as had been represented prove ex post facto, nor would it rip up and nullify titles. But it would make it for the interest of every foreigner to take the oath of allegiance and at the earliest period be-

come a citizen. The law which had been cited by the gentleman from Racine (Mr. Lovell) he deemed conclusive; and he would consequently vote against striking out the section.

Mr. Judd explained. The gentleman from Milwaukee had misunderstood him. He did not mean that past titles would be ripped up, but that the effect hereafter upon foreigners who might purchase property without being aware of the provision would be in the highest degree disastrous; and for that reason, if no other, it ought not to be incorporated.

Mr. Kilbourn thought the remarks of several gentlemen who were in favor of the amendment were based upon a wrong view of the article as reported. They had argued the case as if it would interfere with the titles to property. A little reflection would satisfy them that this was a mistake. The provision was merely declaratory, not prohibitory. If aliens possess rights to property, it does not in the slightest degree interfere with them but merely prohibits others not now citizens but who may become such, from enjoying the same rights until they have taken the first steps to become citizens. This was on the ground that allegiance and protection should be mutual; and he did not believe this was a hardship at which complaints could justly be made.

Mr. Martin called for a division of the question. And the question being first on striking out the fourteenth section, it was decided in the affirmative. The question then being on inserting the words proposed by Mr. Beall, it was decided in the negative.

Mr. Doran moved to amend section fifteen by inserting after the word "debt" the words "nor to satisfy any judgment for libel." Mr. Whiton opposed the amendment on the ground that a libeler might have no property. Unless imprisoned, no punishment could be inflicted. If a libel was to be regarded as a crime, it would be a strange provision which should prevent its punishment. The amendment was lost.

Mr. Martin moved to amend the article by inserting a new section, as section 16, as follows: "The right of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws exempting a reasonable amount of property from seizure or sale for the payment of any debt hereafter contracted. Estates held by the courtesy or in dower shall never be subject to execution

against the tenant, nor shall the enjoyment thereof be altered or abridged by law."

And pending the question thereon,

the committee rose and by their chairman reported progress and asked leave to sit again. Leave was granted.

On motion of Mr. Gale the convention adjourned.

TUESDAY, DECEMBER 28, 1847

Prayer by the Rev. Mr. Read.

The journal of yesterday was read.

The President presented a communication from the Secretary of the territory containing an abstract of the census in certain counties in the territory.

Mr. Lovell, from the committee on the executive, legislative, and administrative provisions, made the following report, to wit:

"The committee on legislative, executive [and administrative] provisions, to whom was referred the article on the executive, with instructions so to amend as to provide for the office of lieutenant governor and to prescribe his duties, and also to strike out the words 'two-thirds of the members present' when they occur in section 10, and insert in lieu thereof the words 'a majority of the members elected,' respectfully submit the following amendments in accordance with their instructions:

"Strike out sections numbered 1, 2, 3, 7, and 8 [and insert the annexed sections numbered 1, 2, 3, 7, 8, and 9] in lieu thereof; also amend section 9 by striking out the words 'two-thirds of the members present' whenever they occur and inserting in lieu thereof the words 'a majority of the members elected.'

F. S. LOVELL, *Chairman*"

"Section 1. The executive power shall be vested in a governor, who shall hold his office for two years; a lieutenant governor shall be elected at the same time, and for the same term.

"Section 2. No person except a citizen of the United States and a qualified elector of this state shall be eligible to the office of governor or lieutenant governor.

"Section 3. The governor and lieutenant governor shall be elected at the times and places of choosing members of the legislature. The persons respectively having the highest number of votes for governor and lieutenant governor shall be elected; but in case two or more shall have an equal and the highest number of votes for governor or ["and" in MS] lieutenant governor, the two houses of the legislature at its next annual session shall forthwith by joint ballot choose one of the persons so having an equal and the highest number of votes for governor or lieutenant governor. The returns of election for governor and lieutenant governor shall be made in such manner as shall be prescribed by law.

"Section 7. In case of the impeachment of the governor, or his removal from office, death, inability from mental or physical disease, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor for the residue of the term or until the governor absent or impeached shall have returned or the disability shall cease. But when the governor shall with the consent of the legislature be out of the state in time of war at the head of the military force thereof, he shall continue commander-in-chief of the military of the state.

"Section 8. The lieutenant governor shall be president of the senate but shall have only a casting vote therein. If during a vacancy of the office of governor the lieutenant governor shall be impeached, displaced, resign, die, or from mental or physical disease become incapable of performing the duties of his office, or be absent from the state, the secretary of state shall act as governor until the vacancy shall be filled or the inability shall cease.

"Section 9. The lieutenant governor shall receive double the per diem allowance of members of the senate for every day's attendance as president of the senate and the same mileage as shall be allowed to members of the legislature."

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 2, article on the administrative.

Mr. Kilbourn, from the committee on general provisions, reported the following article, which was read the first and second times and ordered printed:

MILITIA

"Section 1. The militia of this state shall consist of all free, able-bodied male persons (negroes and mulattoes excepted) resident in the said state, between the ages of twenty-one and forty-five years, except such persons as now are or hereafter may be exempted by the laws of the United States or of this state; and they shall be armed, equipped, organized, and disciplined in such manner and at such times as may be directed by law. Those who conscientiously scruple to bear arms shall not be compelled to do so but shall pay an equivalent for personal service.

"Section 2. The militia of this state shall be divided into convenient divisions, brigades, regiments, battalions, and companies, with officers of corresponding titles and rank to command them, conforming as nearly as practicable to the general regulations of the army of the United States.

"Section 3. Captains and subalterns in the militia, field officers of regiments, brigade inspectors, brigadier generals, and major generals shall be elected or appointed in such manner as shall hereafter be provided by law.

"Section 4. The governor shall appoint the adjutant general and other members of his staff. Major generals, brigadier generals, and commanders of regiments and separate battalions shall respectively appoint their own staff. All staff officers shall continue in office during good behavior and shall be subject to be removed by the superior officer from whom they respectively receive their appointment.

"Section 5. All military officers shall be commissioned by the governor.

"Section 6. The militia as divided into divisions, brigades, regiments, battalions, and companies, pursuant to the laws now in force, shall remain so organized until the same shall be altered or regulated by the legislature.

BYRON KILBOURN, Chairman"

The resolution introduced by Mr. Chase yesterday, relative to granting the hall to Mr. Van Amringe for the purpose of lecturing, was then taken up. And the question having been put on the adoption of the same, it was decided in

the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 40, negative 20; for the vote see Appendix I, roll call 21].

The resolution introduced by Mr. Harrington yesterday, relative to depriving the legislature from abolishing capital punishment, was then taken up, when Mr. Jackson moved that the same be laid upon the table, which was agreed to.

Resolutions were introduced and read as follows, to wit:

By Mr. Folts: "*Resolved*, That the committee on the schedule and miscellaneous provisions be instructed to consider and report whether or not it is expedient to incorporate a clause in the constitution, exempting from forced sale on debts created after the adoption of this constitution a sum not less than $500, which sum may be increased by the legislature, to consist of real or personal property, or of both, at the option of the debtor."

By Mr. Chase: "*Resolved*, That the committee on general provisions be directed to inquire into the expediency of restricting the sale of lands belonging to the state to actual settlers."

No. 2, article on the administrative, was then taken up and read the third time. And the question having been put on the adoption of the same, it was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 59, negative 6; for the vote see Appendix I, roll call 22].

The report made by Mr. Lovell this morning was then taken up. And the question being on concurring in the amendments of the committee to No. 1, article on the executive, Mr. Lovell called for a division of the question. The President decided that the question was divisible and would be first put on the first amendment. And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 40, negative 25; for the vote see Appendix I, roll call 23].

And the question having been put on the adoption of the second amendment, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 30, negative 35; for the vote see Appendix I, roll call 24].

The said article was then read a third time. And the question having been put on the passage of the same, it was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 44, negative 21; for the vote see Appendix I, roll call 25].

The convention then resolved itself into committee of the whole for the further consideration of No. 3, preamble [and declaration of rights], Mr. Case in the chair.

Mr. Martin renewed his motion to amend the article by inserting a new section, as section 16, as follows: "The right of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws exempting a reasonable amount of property from seizure or sale for the payment of any debt hereafter contracted. Estates

held by the courtesy or right of dower shall never be subject to execution against the tenant nor shall the enjoyment thereof be altered or abridged by law."

Mr. Beall was in favor of the principle of exemptions but did not think this was the proper place to insert a provision on that subject. He was also opposed to the amendment on the ground that it did not go far enough—it was not sufficiently specific and definite. He was in favor of a provision which should make a definite exemption of a homestead; and he believed that a failure to place such an article in this constitution would secure for it the same fate which the bank article secured to the first constitution.

Mr. Martin said he offered the amendment at this time because he believed this to be a suitable provision upon the subject and a proper place to insert it. He was not in the territory at the time the vote was taken on the old constitution, but he had been informed and from all he had heard on the subject he believed that the most serious objection to that instrument was the article on this very subject—the article on exemptions, or the homestead exemption, as it was called.

The principle of exempting to some extent the property of the debtor from forced sale for the payment of debts was one which commended itself to every man. That exemption laws should exist in some form and to some extent might be regarded as an admitted principle. But to what extent and under what restrictions and limitations it should be carried into effect required the details of legislation and could not be provided for in the constitution. It was enough that the constitution should declare the principle and leave it to the legislature to provide how far the principle should be carried, to what it should apply, and by what rules it should be governed.

Formerly a distinction was made between those who possessed real estate and those who did not. But it was not so in this country. We did not regard the man whose property might be invested in real estate as of nobler blood than he whose property was invested in money or in personal effects; or that he was entitled to any special privileges on that account, as would be implied by special exemptions of real estate in preference to other property.

He was not aware that any state in the Union had provided for the exemption of real estate by constitutional provisions, except the state of Texas. They had exempted a homestead not exceeding two

hundred acres, or a town or city lot not exceeding $2,000 in value. He thought the amount of value which might with propriety be exempted could not be settled for all time to come. It might vary with the varying circumstances of the community. The circumstances of the community might be such as to justify the exemption of $2,000 in value, or they might be such as not to justify the exemption of more than $250; and hence the necessity of leaving the legislature to determine the amount and the kind of property to be exempted and to alter and amend those provisions to suit the varying circumstances of the community.

As to the rights of married women: The rejected constitution provided for the registering of the wife's property and for establishing a separate property between her and her husband. This he believed to be wrong. The law properly regarded man and wife as one; and he believed there should be a unity of interests subsisting between them so far as her personal property was concerned. He was willing to say that the income from the realty of the wife should not be taken for the husband's debts; and his amendment so provided.

Mr. Chase was in favor of the principles contained in the amendment, so far as they went. His objection to it was that it did not go far enough, and that was not the proper time and place to introduce such provisions on that subject as would meet his views and the views of his constituents. They declared in another section of the bill of rights that all men are born free and independent and endowed with certain inalienable rights, among which were life, liberty, and the pursuit of happiness. But of what use were such declarations if a man could not enjoy those rights unless he was heir to a sufficient number of dollars to purchase them? Of what use was it to declare a man's right to life unless they declared also that he had a right to a place to live? It would be worse than folly to declare that a man had a right to those elements which were essential to life, and yet place one of those elements beyond his reach unless he had the money in his pocket or the products of labor wherewith to buy it.

Mr. Castleman was opposed to the amendment. He had heard last week, and sixty miles from this place, that just such a proposition as this would be offered in this convention. But notwithstanding this it surprised him to find this subject the very first under discussion on his return to his seat. His constituents had instructed

him to vote against it, and those instructions were in accordance with his own opinions. The article on exemption in the old constitution was to his constituents the most exceptionable of any contained in it, and it seemed to him this would be more objectionable even than the provision of the old constitution, for the reason that it went further. If he understood the term "by the courtesy," it means the real estate held by the wife at the time of her marriage and left to her husband at the time of her death, under certain circumstances. Now the wife at the time of her marriage may have held a million acres. On the strength of that the husband obtains credit; the wife enjoys equally with him the benefits of such credit. Shall her property to an unlimited amount be exempted from paying for the benefits which she enjoyed during her life and revert on her death to her relations? Would it be right?

But he had another objection. He should oppose now, and always, engrafting on the constitution legislative detail on this as on all subjects. He was in favor of the principle of exemption—but declare the principle in the constitution and leave detail to the legislature. He had confidence in the people and in their power properly to instruct their representatives. He would then leave the subject to the legislature, thus instructed, to enact, and to alter the amount exempted, as circumstances might require. If the gentleman would withdraw the last clause of his amendment, he might vote for it; he certainly could not until then.

Mr. Whiton called for the reading of the amendment and called the attention of the mover to some legal question involved in the latter clause, to which Mr. Martin briefly replied. Mr. Judd insisted that the latter clause did not protect the wife in the enjoyment of any of her property but protected the husband in the enjoyment of the income arising from it. He felt in something of a fix in regard to the whole amendment. As had been remarked by the gentleman from Fond du Lac, he was in favor of the general principle and wished to vote for it at a proper time and in a proper shape. But he did not like the form or the place in which it had been introduced. He wished for a separate article on that subject, fixing a definite homestead exemption.

Mr. Doran was opposed to the amendment proposed for the reason that the committee to whom the subject was referred had not had time to report; and on other occasions the opinion of the convention was decided that the action of the several committees should

not be anticipated by instructions or otherwise. He was also opposed to the insertion of the principle contained in this amendment in the article under consideration when in his opinion it most properly belonged to the legislative article. He was further opposed to the proposed amendment because it manifestly could not secure the end desired by the honorable president who moved it, and if adopted into the constitution would bear a judicial construction in all probability very different from that apparently attached to it. A proposition granting to debtors the enjoyment of the "necessary comforts" of life would undoubtedly be open to a variety of constructions, legislative and judicial, and would be recognizing a principle of far greater latitude than was proposed on this point in the late constitution. What would be considered only comforts or "necessary comforts" by one class, such as the honorable gentleman from Brown belongs to, would be a world of luxury to the great mass of the population whose direct rights would be clearly encroached on by the "privileges" about to be secured to debtors luxuriating in the "necessary comforts" provided therein or intended to be secured to them by this constitution. He wished, for one, to see the working classes leveled upward instead of forever depressing them by the contemplated legislation, which would in his opinion have that inevitable effect.

As to the last clause of the proposed amendment, which goes to secure "estates held by the courtesy or in dower from execution against the tenant," he (Mr. Doran) could see but little analogy between the rights it intends to protect and the somewhat similar rights so stringently and so jealously intended to be protected by the married-woman clause in the late constitution. There seemed to be a difference of opinion as to the nature of the estate held by the courtesy, and if according to a strict legal construction marriage, issue under the marriage, and the death of the wife must occur before an estate can be considered and holden by "the courtesy," surely the honorable President did not intend to give the terms this limited construction and thus whittle down the entire and inalienable rights of married women to this simple and, to them, useless point; for he took it for granted that if once dead a married woman would care very little what might come of the estate by "the courtesy." The definition given of the estate by "the courtesy" by the gentleman from Rock (Mr. Whiton) was undoubtedly correct, and the three things above mentioned, viz., marriage, issue, and the

death of the mother of such issue, must occur before the estate by "the courtesy" could vest. But for his part, he (Mr. Doran), knowing the liberality of the honorable mover of the amendment, the great sympathy he felt that the late constitution was rejected, and the rights of the married women intended to be secured thereby wholly unguarded; he, knowing all this, was rather impressed by the belief that the honorable mover intended the estate by "the courtesy" to mean such estate as a debtor might hold by the courtesy of the creditor, thus exempting all the estate of the debtor from execution and forced sale.

By this literal construction of the wording of the amendment the honorable gentleman's general disposition can be reconciled with his proposed amendment. If this latter be the right construction, the construction intended, or the construction of which the clause is susceptible, it went a little too far for him; and if it did not mean this it was worth nothing. Under this view of the case, he should feel constrained to vote against the amendment.

Mr. Martin modified his amendment by withdrawing the clause relating to the property of the wife. His object in so doing was to get an expression directly upon the question of exemptions. The gentlemen from Fond du Lac (Messrs. Beall and Chase) and the gentleman from Dodge (Mr. Judd) seemed to regard this question as being in their keeping, exclusively—as their thunder—as if it were for them to introduce resolutions and instruct committees on the subject, and to determine when and in what form it should come up, and that other members had no right to meddle with the subject. [The gentlemen from Fond du Lac and Dodge disclaimed entertaining any such sentiments.] Mr. Martin said he presumed the objections as to the form, time, and place in which it had been introduced were made more for the purpose of defeating the amendment than to find fault with him. He supposed he had a right to bring up the question in that form, at that time, and in that place, and to express his opinions upon it; and while he was up he would give it as his opinion that if those gentlemen were in favor of the principle, as they professed to be, they had better come out and sustain it then.

Mr. Estabrook said as it seemed that whether this amendment passed or not the question was to be again brought up in another shape, and that they were to have pretty considerable of a fight upon it, he would here say that he should oppose the principle as a

constitutional provision in all its moods, tenses, persons, forms, and shapes; for if there was any one thing in the old constitution which called forth the deep loathing and disgust of his constituents, it was the article on this very subject. He cared not whose thunder it was nor who made use of it; he wanted none of it himself. It was a subject which should have no place in the constitution and would not if his vote could keep it out.

Mr. Beall expressed his determination to vote for the amendment, but with the determination to get something more definite hereafter, if possible.

Mr. Lovell was in favor of the amendment. He had a seat in the first convention which adopted the article on this subject. When it was first brought up the measure struck him favorably, and for a time he supported it, not thinking of the difference between constitution making and ordinary legislation. As the question progressed he soon discovered the difficulty of framing an article to his own satisfaction and finally voted against it. An article was reported. It was evidently defective. It did not suit the friends of the measure. It was amended and passed. Still it did not suit the majority that passed it; and they finally got into pretty much of a snarl about it. In the course of the proceedings on that article he discovered the difficulty—that it was impossible to pass a specific exemption with proper guards against its abuse and so as to secure equal justice to all, without marring the constitution with all the details of ordinary legislation. The amendment simply declared the principle; and that was all that could with any safety or propriety be placed in the constitution.

Mr. McClellan hoped the amendment would be adopted. He believed it was all that the convention could with propriety do upon the subject. The legislature would then have ample powers to legislate upon the subject; and the details of an exemption law belonged in the statute book and not in the constitution.

Mr. Sanders spoke briefly against the amendment and was understood to oppose it on the ground that he was opposed to placing any provision in the constitution upon this subject.

Mr. Whiton inquired of the mover of the amendment what would be gained by placing the proposed section in the constitution, or lost by leaving it out. Mr. Martin replied that if placed in the constitution, the legislature could not pass laws to deprive the debtor of all he had without a violation of that instrument.

Mr. Whiton would ask the gentleman further if he thought there was any danger that the legislature would pass such laws if no such provision was in the constitution. The present laws of the territory exempted a liberal amount of property from execution. Every state in the Union recognized the principle of exemption. They all had their exemption laws. It seemed to be a fixed principle in all the state governments to exempt more or less property from execution. Where then was the danger? What was the necessity for this provision in our constitution?

Mr. Doran again addressed the convention in opposition to the amendment, dwelling upon the uncertainty as to what might be considered the comforts of life and the fact that they must be furnished at the expense of the creditor, and concluded by declaring his opposition to any provision of the kind in the constitution as being entirely out of place.

Mr. Chase said as he seemed called upon by his friends to sustain the principles of the amendment he would first move a substitute and see how far they would go in sustaining it. The gist of the substitute was a declaration that every man had a right to a place to live and that it should be the duty of the legislature to pass such laws as were necessary to secure that right. He remarked that the existing laws, while they recognized a woman's right to live, denied his right to a spot to live upon. They did not recognize the right of a man to ground enough to stand upon. If he entered upon his father's land, he was a trespasser. If he entered upon the land of the state, he was a trespasser. If he set his foot anywhere but in the road, he was a trespasser, and if in the road, unless he was traveling, he was regarded as a vagrant. The laws regarded him as a vagrant if in the road and as a trespasser if out of it. He thought nothing could be more clear than that if a man had a right to live he had a right to a place in which to live.

Mr. Estabrook would not have believed that there was a man in that convention who had the hardihood to make such a proposition. His constituents would regard it as intended for the special benefit of bankrupts and defaulters, and he had not supposed there were any such in that body.

The substitute was rejected.

Mr. Kilbourn said that some gentlemen seemed to think that this was not the most proper place for a provision of this kind. Others were in favor of something more definite and explicit, to be intro-

duced separately and at some other time; and others still were opposed to placing any provision of the kind in the constitution. For his own part, he had no fault to find with the principles of the amendment. But he did not think the bill of rights the best place for it. He thought it more properly belonged in the article on the powers and duties of the legislature.

Mr. Gale next obtained the floor, but gave way for a motion that the committee rise and report progress.

The committee then rose and by their chairman reported progress thereon and asked leave to sit again. Leave was granted.

Mr. Vanderpoel moved that the convention adjourn, which was disagreed to. And a division having been called for, there were 23 in the affirmative and 30 in the negative.

On motion of Mr. Estabrook the convention adjourned until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

The convention resolved itself into committee of the whole for the further consideration of No. 3, preamble and declaration of rights, Mr. Case in the chair.

Mr. Gale, being entitled to the floor, proceeded to argue at length against the proposition submitted by Mr. Martin. He regarded it as amounting to this: the legislature shall make a sufficient exemption to secure the necessary comforts of life. This the legislature had a right to do without this constitutional provision. Then why this provision in the bill of rights? But another question would arise: What are comforts? How far will such a provision authorize the legislature to act? Courts have always shown a marked liberality in the construction of a law in favor of exemptions. In Vermont the statute after enumerating various articles says "and such other articles necessary for upholding life." Under this provision of the statute the supreme court of the state had held that a clock and rifle "were necessary for upholding life." Should our legislature give a like liberal construction to the provision in the constitution, it would feel itself bound to exempt everything that would be considered "a comfort of life." It would include at least a quarter-section of land, a fine house, and, in fact, an unlimited amount of property. But if this amendment amounted to nothing, as claimed by the gentleman from Fond du Lac (Mr. Chase) and the

gentleman from Dodge (Mr. Judd), then why give it a place in the constitution?

The policy and justice of large exemptions was, to say the least, of doubtful expediency. Then why incorporate them into the constitution? The exemption should be merely a legislative enactment. Then the law could be carried out in detail, and if its operation was bad it could be amended. Not so with the constitution. It was to become the permanent law of the land and should not be the subject of frequent alteration. It was known that a large proportion of the electors voted against the late constitution on account of the exemption. Then why incorporate any provision that was known to be objectionable to a large proportion of the people? They were framing the fundamental law of the state; and such provisions as were of doubtful policy should be left to the legislature and not be incorporated in the constitution, thereby endangering its adoption by the people. He was in favor of a liberal exemption but thought the constitution was not the place to make the provision.

From the proposed amendment and the arguments which had been made on the floor he was inclined to the belief that the gentleman from Brown (Mr. Martin) had offered this amendment for buncombe. The gentleman had consistuents both in favor of and against a large exemption. To those in favor of a large exemption he supposed the gentleman would say that it was amply sufficient to secure the largest and most liberal; and to those opposed he would say, as had been repeatedly remarked upon the floor by gentlemen, that it amounted to nothing at all.

The gentleman from Fond du Lac (Mr. Chase) had claimed that we should be progressive—but there was such a thing as progression without progress. It was an old law maxim that men should "be just before they were generous." True progress required that justice should be enforced rather than that large amounts of property should be covered up beyond the reach of honest demands. The experience of the past year had given him a decided dislike for some things falsely called "progression." The uncertainty of the proposition, to say the least of it, was a sufficient objection to its adoption. The gentleman from Fond du Lac and the gentleman from Dodge had informed them that the subject of exemptions was now pending before one of the standing committees and would soon be before this convention in a regular report; and he thought it

both unfair and unjust to forestall the question before they had all the information that could be given by the standing committee.

Messrs. Richardson and Castleman severally offered amendments, which were rejected. The question was then taken on the proposition of Mr. Martin, and it prevailed, 27 to 25. Mr. Gifford offered an amendment, which was lost.

Section 16 was then taken up for consideration. Mr. Chase moved to strike out the words "Almighty God," so that the section would read, "All men have a natural and indefeasible right to worship according to the dictates of their own consciences." He thought the words contradicted the balance of the section, which declared that all men had a natural right to enjoy their own religion. They had an indefeasible right to worship the moon and stars or a block of wood if they desired. In fact he thought most of the adoration of the present day was paid to Mammon—to gold. They ought not, therefore, to be limited to the worship alone of Almighty God. The object should not be specified; and he moved, therefore, that the words be stricken out. The motion was lost.

The committee then rose and by their chairman reported the same back to the convention with sundry amendments.

The question being on concurring in the amendments of the committee of the whole, Mr. Doran called for a division of the question.

The first, second, and third amendments of the committee of the whole were then severally concurred in. Mr. Fox moved to amend the fourth amendment, which was to strike out the fourteenth section, by adding the following proviso, to wit: "*Provided*, That this section shall not be so understood as to escheat the property of foreigners who may happen to die within three years after their arrival in this state, and without such declaration of intention." And the question having been put upon the adoption of the same, it was decided in the affirmative.

Mr. McClellan moved to amend by striking out all between the word "birth" in the first line and the word "shall" in the third line of section 14. And the question having been put on the adoption of the same, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 32, negative 34; for the vote see Appendix I, roll call 26].

The question was then put on concurring in the amendment of the committee of the whole as amended, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 34, negative 32; for the vote see Appendix I, roll call 27].

The question then recurred on the fifth amendment of the committee of the whole, when Mr. Foot moved to amend the same by adding the words "not exceeding in value the sum of $500, said property to be either real or personal

or both at the option of the owner, and its value to be ascertained in such manner as the legislature may prescribe."

Mr. Richardson said inasmuch as he was bound to vote against the amendment he wished to make a statement of the reason for so voting, lest a wrong impression might get abroad. That is, that he was opposed to the principle of exemption, which principle he recognized as being right. It is stated in the first section of this article that all men are born equally free and independent and have certain inalienable rights, among which are life, etc. This he held to be correct, and further, that as a necessary consequence man has a natural right to the means to sustain or perpetuate that life. But at the same time he held that this was a proper subject for legislation and should not enter into the constitution. Upon this subject he was satisfied that he had a very full expression from his immediate constituents, and he firmly believed that the incorporation in the old constitution of the article on exemption was one of the great causes of so large a majority of votes being cast against it in the county which he had the honor to represent in part. His constituents took the same view of the matter as himself. Consequently, he as their representative would vote against every proposition of the kind.

The question having been put upon the adoption of the same, it was decided in the negative.

Mr. Doran moved to amend the amendment by inserting after the word "necessary" the following words, viz., "means to procure ["provide" in MS] the," [so that the amendment would read "the privilege of the debtor to enjoy the necessary means to procure the comforts of life shall be recognized by wholesome laws," etc.]

Mr. Doran said as the amendment stood the legislature might feel constrained to go into a calculation as to what might or might not be considered the "necessary comforts" of a debtor. Besides it was one thing to secure and exempt what might be considered "necessary comforts" and quite another thing to exempt the "necessary means to procure the comforts" of life. In some instances $3,000 might not be considered sufficient to secure those comforts that in the eye of the legislature or according to a judicial construction might be considered "necessary comforts"; whereas no one would consider the necessary "means to procure the" comforts of life to mean more than two or three hundred dollars' worth

of property. Such an exemption he (Mr. Doran) would be willing to vote for; but any speculative, unlimited amount, such as was evidently contemplated by the original amendment, he could not support. The original amendment was being generally supported under the impression that it would be a dead letter in the constitution. For this reason, also, he opposed it, because there was nothing definite, nothing specific. He wished for a reasonable and substantial exemption, calculated to benefit the honest debtor and leave him the means whereby to procure a living—nay, even the comforts of life; but he did not wish to have the constitution incumbered with verbiage calculated to deceive or mislead—with verbiage that a legislature or a judicial tribunal of a particular bias might consider as laid down by way of a basis on which they or either of them was to raise the superstructure of an exemption, securing to the debtor what his taste would demand as the "necessary comforts" of life. This he deemed too vague and calculated to frustrate the desired end—a reasonable exemption.

The amendment was disagreed to.

Mr. Folts moved to amend by adding the words "which exemption shall in all cases be uniform in amount," which was disagreed to. Mr. Chase moved to amend the amendment by striking out all after "Section 16" and inserting: "Every person has a right to a place to live; and it shall be the duty of the legislature to provide by law for such exemptions from forced sale as are necessary to define and secure such rights," which was disagreed to. Mr. Fox moved to amend the amendment by striking out the words "necessary comforts" when they occur and inserting the words "common necessaries," which was disagreed to. Mr. Castleman moved to amend the amendment by striking out the words "or liability," which was disagreed to.

Mr. Folts moved that the convention adjourn, which was disagreed to.

The question then recurred on concurring in the fifth amendment of the committee of the whole, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 43, negative 21; for the vote see Appendix I, roll call 28].

Mr. Richardson moved that the convention adjourn, which was disagreed to.

Mr. Lakin moved to amend section 5 by striking out all after the word "controversy" and inserting "and no judge of any court shall make or give any charge to any petit jury impaneled to try a cause, except in the manner to be prescribed by the statute. But by agreement of the parties thereto a cause may be tried by the court without the intervention of a jury."

And pending the question thereon, Mr. Judd moved that the convention adjourn, which was agreed to. And a division having been called for, there were 38 in the affirmative, negatives not counted. So the convention adjourned.

WEDNESDAY, DECEMBER 29, 1847

Prayer by the Rev. Mr. Penman.

The journal of yesterday was read and corrected.

Mr. Prentiss, from the committee on the schedule and miscellaneous provisions, made the following report, to wit:

"The committee on schedule and other miscellaneous provisions, to whom was referred the petition of sundry inhabitants of Ceresco praying for the incorporation in the constitution about to be formed for the state of Wisconsin [of] a homestead exemption, and being instructed by a resolution of the convention 'to inquire into the expediency of reporting a provision exempting from forced sale, on execution, the homestead of the agriculturist to a certain amount of valuation and to all other classes a like amount in value, to be selected by the owner' have considered the subject of said petition and resolution with no ordinary care. The committee are sensible of the increasing importance which the subject has assumed and have given it all that attention to which it is so justly entitled.

"The great and beneficient policy of reasonable exemptions the committee do not for a moment doubt. Their kind and humane effects are seen and acknowledged by every one. The only question is as to their nature and extent and not as to the principle itself, which is so well settled that it will not be denied and cannot be disturbed. Whether exemptions should be incorporated into the constitution and thus become part of the fundamental law or be embodied in the form of legislative enactments is the only proper inquiry that presents itself to the committee.

"The organic law should consist of fundamental principles, fixed and permanent, and not easily changed. Matters of doubtful expediency or which may be subject to frequent alteration or amendment should be left to the legislature.

"The committee believe that exemptions are of the latter character; that they are peculiarly and emphatically within the province of legislation, requiring legislative details and alteration and amendment from time to time; and especially is it so in regard to the homestead exemption, which, to say the least of it, is an experiment yet untried. It is true it might work well and it might not. But it would undoubtedly need alteration and amendment from time to time.

"The committee have therefore deemed it inexpedient to report any article on the subject to the convention or to recommend any action thereon, and would ask leave to be discharged from the further consideration of said petition and that the petitioners have leave to withdraw their petition.

THEODORE PRENTISS, Chairman"

Said report was accepted, and the committee discharged from the further consideration of the subject.

Mr. Castleman, from the committee on banks and banking and incorporations, made the following minority report, to wit:

"The undersigned, a minority of the committee on banks and banking and incorporations, regretting that he cannot concur in the opinion of a majority of the committee as expressed in the report on the subject of banks, submits the following as some of the reasons for his dissent:

"First. That the whole country has repeatedly, by parties as well as by the masses, declared against the expediency of granting special and exclusive banking privileges.

"Second. In allowing special charters the report of the majority fails to provide any guard against allowing the state to become a stockholder to any amount and on any terms, thus opening the field to political speculators and offering bribes and inducements to political stock jobbers to place themselves in the legislative market.

"Third. Whilst the granting of special banking privileges by the legislature would open the avenues to fraud and bribery, it would effectually bar those to free competition, confining the benefits it confers to a favored few, who will always find means, as they ever have done, of making the public subservient to their interests, instead of being, as intended, themselves subservient to the public weal, and thus opening the door amongst the applicants for the privilege, as well as in our legislatures, to bitterness, jealousy, and strife, to wrangling without gain, to agitation without progress, and to excitement without the benefits expected from legislation.

"Fourth. Inasmuch as the chief objection raised by the report of the majority to banking is that it is a monopoly 'confining its advantages to the wealthy and speculating classes to the entire exclusion of a large portion of the industrious and poorer classes, and would, therefore, be in its effects granting exclusive and monopolizing privileges to a small portion of our inhabitants to the exclusion of the great mass of the population,' the minority deems it but right that a feature so odious should as far as practicable be neutralized by opening the door to the free use of capital and equal rights to all wishing to engage in it, rather than render it more odious by confining its advantages to a privileged few.

"Fifth. Under a well-regulated banking law, as compared with special banking, the country will be less liable to fluctuations in the amount of paper circulation from the fact that under such a law its circulation is but a representation of capital, no bank being allowed to issue till it shall have placed beyond the reach of contingency security in value for the redemption of all its bills. It will consequently be the object of all banks thus organized to keep in circulation the amount for which they have given security; nor can they ever issue a dollar beyond it.

"The above are a few of the reasons which have compelled the undersigned to dissent from the report of the majority of the committee, and from these considerations would respectfully submit the following article on banks and banking:

" 'Section 1. The legislature of this state shall not have power to grant any special bank charters nor any special banking privileges whatever; but associations may be formed for banking purposes under general laws and conveying rights equally to every citizen.

" 'Section 2. Every such law, before it takes effect, shall after it has passed through the usual forms of legislation be published in at least one

newspaper in each county of this state in which a newspaper is published, for ten weeks successively next preceding the next general election, and at said election shall be submitted to a vote of the electors of the state, and shall be approved by a majority of the votes cast on that subject at said election, which votes shall be ascertained, canvassed, and returned in such manner as the legislature may provide.

" 'Section 3. The stockholders in every bank and banking association shall be made individually liable to the amount of their stock therein for all its debts and liabilities, during the time of their holding the stock, and for the term of six months after they shall have transferred the same; and in case of the insolvency of any such bank or association, bill holders thereof shall have preference in payment over all other creditors of such bank or association.

" 'Section 4. The legislature shall provide by law for the registry of all notes and bills put in circulation as money and shall require ample security for the redemption of the same in specie.

" 'Section 5. The legislature shall not have power at any time to authorize any bank or banking association to suspend specie payments.

" 'Section 6. Any law passed under the provisions of this article may be amended or repealed in such manner as the said law shall enact, and in no other manner whatever.'

ALFRED L. CASTLEMAN"

Said article was read the first and second times.

Mr. Sanders moved that 300 copies of the majority and minority reports of the committee on banks and banking be printed, which was agreed to.

The President presented a communication from the Secretary of the territory, containing an abstract of the census in certain counties in the territory.

Mr. King moved that the several communications from the Secretary of the territory, relative to the census, be referred to a select committee of three, with instruction to prepare the same for publication together with the census of 1846, which was agreed to. The President announced the appointment of the following committee to whom said communications were referred, to wit: Messrs. King, Lewis, and Warden.

Resolution No. 2, introduced by Mr. Chase yesterday, was taken up. And the question having been put upon the passage of the same, it was decided in the negative.

Mr. Judd said it was well known to members that the family of Col. George W. Featherstonhaugh, a member of this convention, had been suddenly affected by the loss of a beloved child. The funeral was appointed to take place at the National Hotel at half past eleven o'clock, and doubtless a great majority of the convention were desirous of being present at the last solemn ceremonies.

Mr. Judd therefore moved that the convention adjourn, which was agreed to.

THURSDAY, DECEMBER 30, 1847

Prayer by the Rev. Mr. Penman.

The journal of yesterday was read.

Mr. Wheeler presented two petitions of the inhabitants of Dane County praying that a homestead exemption be secured to every family by the comstitution, which were laid upon the table.

Mr. Kilbourn, from the committee on general provisions, reported the following articles, to wit: No. 10, article on finance, as follows:

FINANCE

"Section 1. All taxes levied in this state shall be as nearly equal as may be.

"Section 2. The property of the state and counties, both real and personal, and such property as the legislature shall deem proper, belonging to educational, charitable, or religious institutions, or set apart for such purposes, shall be exempted from taxation.

"Section 3. No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.

"Section 4. The credit of the state shall never be given or loaned in aid of any individual, association, or corporation.

"Section 5. This state shall never contract any public debt, unless in time of war, to repel invasion, or suppress insurrection, except in the cases and manner herein provided.

"Section 6. The legislature shall provide for an annual tax sufficient to defray the estimated expenses for each year, and whenever it shall happen that the expenses of the state for any year shall exceed the income of the state for such year, the legislature shall provide for levying a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses of such ensuing year.

"Section 7. For the purpose of defraying extraordinary expenditures the state may contract public debts, but such debts shall never singly nor in the aggregate exceed $200,000. Every such debt shall be authorized by law for some purpose or purposes, to be distinctly specified therein; and the vote of a majority of all the members elected to each house, to be taken by yeas and nays, shall be necessary to the passage of such law; and every such law shall provide for levying an annual tax sufficient to pay the annual interest of such debt and also a tax sufficient to pay the principal of such debt within ten years from the passage of such law and shall specially appropriate the proceeds of such taxes to the payment of such principal and interest; and such appropriation shall not be repealed; and such taxes shall not be postponed or diminished until the principal and interest of such debt shall have been wholly paid.

"Section 8. On the passage in either house of the legislature of any law which imposes, continues, or renews a tax, or creates a debt or charge, or makes, continues, or renews an appropriation of public or trust money, or releases, discharges, or commutes a claim or demand of the state, the question

shall be taken by yeas and nays, which shall be duly entered on the journals; and three-fifths of all the members elected to each house shall in all cases be required to constitute a quorum therein."

No. 11, article on eminent domain and property of the state, as follows:

EMINENT DOMAIN AND PROPERTY OF THE STATE

"Section 1. This state shall have concurrent jurisdiction on the river Mississippi and on every other river and lake bordering on this state, so far as the said river or lake shall form a common boundary to this state and any other state or territory now or hereafter to be formed and bounded by the same; and the said river Mississippi, and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same shall be common highways and forever free as well to the inhabitants of this state as to the citizens of the United States, without any tax, impost, or duty therefor.

"Section 2. All lands and other property which have accrued to the territory of Wisconsin by grant, gift, purchase, forfeiture, escheat, or otherwise shall vest in the state of Wisconsin.

"Section 3. The people of this state, in the right of sovereignty, are declared to possess the ultimate property in and to all lands within the jurisdiction of this state; and all lands, the title to which shall fail from a defect of heirs, shall revert or escheat to the people.

"Section 4. All lands which shall come to the state by forfeiture or escheat, or by grant, where the grant does not specially dedicate the same to any other object, shall be held by the state as a part of the state school fund, under the same trusts, reservations, and restrictions as are provided in this constitution in regard to school lands proper.

BYRON KILBOURN, Chairman"

No. 12, article on internal improvements, as follows:

INTERNAL IMPROVEMENTS

"Section 1. This state shall encourage internal improvements by individuals, associations, and corporations, but shall not carry on or be a party in carrying on any work of internal improvement except in cases authorized by the second section of this article.

"Section 2. When grants of land or other property shall have been made to the state, especially dedicated by the grant to particular works of internal improvement, the state may carry on such particular works and shall devote thereto the avails of such grants so dedicated thereto, but shall in no case pledge the faith or credit of the state or incur any debt or liability for such work of internal improvement."

No. 13, article on acceptance of act of Congress, as follows:

Acceptance of Act of Congress

"Section 1. The propositions of the Congress of the United States, made and contained in the act of the sixth day of August, 1846, entitled 'An Act to enable the people of Wisconsin Territory to form a constitution and state government and for the admission of such state into the Union,' are hereby accepted, ratified, and confirmed: *Provided*, nevertheless, That nothing in this constitution or in the act of Congress aforesaid shall in any manner prejudice or affect the rights of the state of Wisconsin to five hundred thousand acres of land granted to said state and to be hereafter selected and located by and under the act of Congress entitled 'An Act to appropriate the proceeds of the sales of the public lands and grant preëmption rights,' approved September 4, 1841.

"Section 2. The state shall never interfere with the primary disposal of the soil within the same by the United States nor with any regulations Congress may find necessary for securing the title in such soil to bona fide purchasers thereof; and in no case shall nonresident proprietors be taxed higher than residents."

Said articles were severally read the first and second times and ordered printed.

Mr. Fox, from the same committee, made the following minority report on internal improvements, which was read and ordered printed, to wit:

"The undersigned, a minority of the committee on general provisions, to whom was referred the subject of internal improvements, respectfully submit the following report dissenting from [the conclusions at which] the majority of said committee have arrived in the first section of the article on internal improvements as reported by them to the convention, and give the following reasons for such dissent: Believing that the people have the right to govern in all cases, and should they at any time deem it expedient to vote for a law authorizing any particular work of internal improvement and providing for levying a tax sufficient to complete said work, we consider it their sovereign right to do so."

Mr. Lovell, from the committee on executive, legislative, and administrative provisions, made the following report, which was read, to wit:

"The committee on executive, administrative, and legislative provisions, having been instructed to inquire into the expediency of providing in the constitution, first, that every law shall in its details be in accordance with its title; second, that no member of the legislature shall receive any reward for forwarding any business of the legislature; and third, that the fuel and stationery for the use of the state and the preparing, printing, etc. of the laws and journals and all public printing shall be let by contract to the lowest responsible bidder, have had the several matters under consideration and respectfully submit the following report:

"The committee have thought it expedient to place in the constitution a provision in accordance with the first proposition and have accordingly sub-

mitted a section to that effect in the article legislative, accompanying this report. As to the other propositions referred, the committee have deemed it inexpedient to incorporate them in the constitution for the reason that they are legislative in their character and must be so in their details. The legislature has full power under the ordinary parliamentary law to expel or impeach a member for corrupt practices and equally to guard the purity of legislation without, as with, the proposed constitutional provision.

"The committee are also of opinion that the matters referred to in the third proposition would be equally safe in the control of the legislature. A constitutional provision, inflexible in its nature, and which should take from the legislature and state officers all power over the subject, might and probably would create great inconvenience, while to place it above the necessary and proper exceptions, so as still to give the legislature control over the subject, would take from the provision the inflexibility which alone should give it a place in the constitution. For these reasons the committee ask to be discharged from the further consideration of these subjects.

F. S. LOVELL
RUFUS KING
D. G. FENTON
O. COLE
H. LATHAM
H. G. TURNER"

And also reported No. 14, article on legislative, which was read the first and second times and ordered printed, as follows:

LEGISLATIVE

"Section 1. The legislative power shall be vested in a senate and assembly.

"Section 2. The number of the members of the assembly shall never be less than forty-five nor more than eighty. The senate shall consist of a number of members not more than one-third nor less than one-fourth of the number of the members of the assembly.

"Section 3. The legislature shall provide by law for an enumeration of the inhabitants of the state in the year 1855 and at the end of every ten years thereafter; and at their first session after such enumeration and also after each enumeration made by the authority of the United States the legislature shall apportion anew the members of the senate and assembly according to the number of inhabitants, excluding Indians not taxed and soldiers and officers of the United States Army and Navy.

"Section 4. The members of the assembly shall be chosen by single districts, annually, on the day of the general election, by the qualified electors of the several districts.

"Section 5. The senators shall be chosen for two years, and at the same time, in the same manner as members of the assembly are required to be chosen. Two senators shall be chosen in each senate district, and at the first session of the legislature they shall be divided by lot from their respective districts into two equal classes; the seats of the senators of the first class shall

be vacated at the expiration of the first year and of the second class at the expiration of the second year, so that one-half thereof shall be chosen annually thereafter.

"Section 6. Members of the legislature shall be qualified electors in the respective districts which they represent and shall have resided at least one year in the state.

"Section 7. Each house shall be the judge of the election returns and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

"Section 8. Each house may determine the rules of its own proceedings, punish for contempts and disorderly behavior, and, with the concurrence of two-thirds of all the members elected, expel a member; but no member shall be expelled a second time for the same cause.

"Section 9. Each house shall choose its own officers; and the senate shall choose a temporary president when the lieutenant governor shall not attend as president or shall act as governor.

"Section 10. Each house shall keep a journal of its proceedings and publish the same, except such parts as require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall without consent of the other adjourn for more than three days.

"Section 11. The legislature shall meet at the seat of government, at such time as shall be provided by law, once in each year and not oftener, unless convened by the governor.

"Section 12. No member of the legislature shall during the term for which he was elected be appointed or elected to any civil office in the state, which shall have been created or the emoluments of which shall have been increased during the term for which he was elected.

"Section 13. No person being a member of Congress or holding any civil or military office under the United States shall be eligible to a seat in the legislature. And if any person shall after his election as a member of the legislature be elected to Congress or be appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

"Section 14. The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature.

"Section 15. Members of the legislature shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest; nor shall they be subject to any civil process during the session of the legislature nor for fifteen days next before the commencement and after the termination of each session.

"Section 16. No words spoken in debate in either house of the legislature shall be the foundation of any action, complaint, or prosecution whatever.

"Section 17. The style of the laws of the state shall be, 'The people of the state of Wisconsin, represented in senate and assembly, do enact as follows'; and no law shall be enacted except by bill.

"Section 18. No private or local bill which may be passed by the legislature shall embrace more than one subject; and that shall be expressed in the title.

"Section 19. Any bill may originate in either house of the legislature; and all bills passed by one house may be amended by the other.

"Section 20. One-sixth of the members present shall be entitled to call for the yeas and nays on any question and have the same entered on the journal.

"Section 21. Each member of the legislature shall receive for his services $3.00 for each day's attendance during the session, and ten cents for every mile he shall travel in going to and returning from the place of the meeting of the legislature, on the most usual route.

"Section 22. The legislature may confer upon the boards of supervisors of the several counties of the state such powers of a local legislative and administrative character as they shall from time to time prescribe.

"Section 23. The legislature shall establish but one system of town and county government, which shall be uniform, as near as may be, throughout the state.

"Section 24. The legislature shall never authorize any lottery or grant any divorce.

"Section 25. The legislature shall never grant any extra compensation to any public officer, agent, servant, or contractor, after the service shall have been rendered or the contract entered into. Nor shall the compensation of any public officer be increased or diminished during his term of office.

"Section 26. The legislature shall direct by law in what manner and in what courts suits may be brought against the state.

"Section 27. Members of the legislature and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall before they enter upon the duties of their respective offices take and subscribe an oath or affirmation to support the Constitution of the United States and the constitution of the state of Wisconsin, and faithfully to discharge the duties of their respective offices to the best of their ability."

Mr. Judd, from the minority of said committee, made the following report which was read and ordered printed, to wit:

"The minority of the committee on executive, legislative, and administrative provisions, to which was referred the resolution instructing them to inquire into the expediency of incorporating into the constitution a section embracing the following provisions: first, that the legislature shall provide by law that the fuel and stationery furnished for the use of the state, the copying, printing, binding, and distributing of the laws and journals, and all other printing ordered by the legislature shall be let by contract to the lowest bidder, and that the legislature may fix a maximum price; second, that no member of the legislature or other officer of state shall be interested either directly or indirectly in any such contract, make the following report:

"Differing entirely from the majority of the committee in their report, the minority of the committee recommend the adoption of the following section as a part of the article on the powers, duties, and restrictions of the legislature: 'Section —. The legislature shall provide by law that all stationery re-

quired for the use of the state and all printing authorized and required by them to be done for their use and for the state shall be let by contract to the lowest bidder; but the legislature may establish a maximum price; no member of the legislature or other state officer shall be interested either directly or indirectly in any such contract.' "

Mr. Fenton introduced the following resolution, which was read, to wit: "*Resolved*, That the printers of the convention be directed to print 500 copies of the daily slips in journal form, with a sketch of the debates daily, and to prepare an index therefor, and to have the journal of the convention printed, stitched, and bound, and ready so that each member can have a complete copy furnished him at the time of the adjournment or as soon thereafter as circumstances will permit."

Resolution No. 1, introduced by Mr. Folts on the twenty-eighth instant was then taken up. Mr. Beall moved to amend the resolution by striking out the words "committee on schedule and other miscellaneous provisions" and inserting in lieu thereof the words "a select committee of five." And the question having been put upon the adoption of the amendment, it was decided in the affirmative. The resolution as amended was then adopted. The President announced the appointment of the following committee under said resolution, to wit: Messrs. Beall, Folts, Estabrook, Judd, and Ramsey.

No. 3, preamble and declaration of rights, was then taken up, when Mr. Lakin moved to amend the same by striking out in the fifth section all after the word "controversy" and inserting the following: "And no judge of any court shall make or give any charge to any petit jury impaneled to try a cause, except in the manner to be prescribed by the statute; but by agreement of the parties thereto a cause may be tried by the court without the intervention of a jury."

Mr. Lakin addressed the convention as follows: MR. PRESIDENT—The principle suggested and contended for in the proposed amendment would seem to address itself to the candid consideration of every rational mind. In the language of the honorable member from Fond du Lac, expressed by him upon the resolution heretofore introduced upon this subject, and who is generally right upon most subjects, "it is the beginning and the end of judicial reform."

This has been regarded as an age of reform, and properly so. But while the energy and ingenuity of man have sought out and applied the proper correctives to almost every other evil "which flesh is heir to," the one which is proposed to be corrected by this amendment has been passed by with but little notice.

The reasons why such has been the case are obvious. We have worshipped with too blind a devotion at the altar of the mother country. We were once a colony, subject to her rule and bound by her decrees. The seeds of her legal lore were sown broadcast over

the country and took deep root in our soil. Her forms, her practices, her dictations, her tyrannies sprang up like magic before us, until they became foes of a most formidable character. In the rupture that took place at an early period the colonists leveled their artillery at those acts of oppression for which the ministry were directly responsible. Those minor matters which stole upon them almost imperceptibly could hardly receive a passing notice.

There are other reasons why this important principle has been neglected. The mass of mankind have ever had other things to occupy their attention. They have never been prepared to pry into and analyze the practices, the decisions, and dicta of the bench. They have looked upon such things as possessing a gravity which precludes all inquiry or investigation. They have regarded the bench as the sanctum sanctorum of the universe, upon which was enthroned the prince of gods and men, against whose omnipotence they have not dared to raise a voice. They have unwarily concluded that whatever was blind, obscure, and incomprehensible must necessarily be wise, profound, godlike.

It is true they have known when they were wronged—they have known when their rights were infringed—they have known when their property has been wrested from them—when their liberty has been invaded—when their lives have been endangered. They have felt the sting of the serpent and the poison of his fangs, but before they have looked around they have been hidden within the jaws of the reptile.

I assume that here and the world over there is a demand for judicial reform, and I will demonstrate the truth of the proposition as nearly as matters of this kind are susceptible of demonstration. It cannot be denied that our republic in its judicial department has followed with a headlong precipitancy in the footsteps of its illustrious predecessor. We have had the English system with but little modification. Read the history of the bench across the Atlantic. Examine trials, civil and criminal—their convictions for libels upon the government, the charges of judges upon such occasions, and their evident predilections in favor of crowns, princes, potentates, and dynasties—and mark the insignificant, powerless, zero-like position which juries have occupied in these enormities. When we follow that pattern without variation, we follow a Medusa, whose look will transform us into stone.

Mankind is fallible, subject to passions, prejudices, caprices, delusions. Men are ambitious and conceited, and in proportion as they are so are unwilling to acknowledge themselves in fault or error. Promote a man, raise him a little above the common level, and he fancies that he has character and dignity to sustain and that anything else is better than to acknowledge a fault; while he denies the error, the majority will believe the denial, and he will be enrolled among the profound, the infallible. Can we deny that these are the legitimate effects of a false pride of opinion and an overweening ambition, when every page of history is full of demonstrations that the same principle has deluged the world with blood, and has filled every town, hamlet, and cottage of Europe with the tears of misery and woe? It is an axiom in moral philosophy that restraints are necessary to confine men within proper bounds. It is upon this basis that all well-regulated governments are established; and it is for this reason that it is necessary to have any government at all. Were it otherwise—were men perfect—you might abolish all laws, and society would experience no inconvenience. Or were men mere machines, obeying certain fixed and unchangeable laws, as do the planets in their revolutions around the sun and as does the solar system, if theories are true, in its revolution around the grand center of the universe, you might tear down every fabric of human legislation, and all would still proceed peacefully and harmoniously. But we act upon a different hypothesis— upon a different fact. The members of the human family may do good or evil, and will do good or evil as motives are presented to them and restraints removed. Every code of laws that was ever framed and published to the world admits the necessity of limiting in some degree the rulers recognized therein; although it must be acknowledged that in many instances the features of despotism and tyranny are by far too prominent. It needs no finespun argument or subtle logic to establish the position that there should be certain and well-defined limits to the prerogative of every officer of state. Upon any other supposition the various departments would encroach upon each other; and discord, dismay, and ruin would be the inevitable consequence. The old ship would be tossed about upon the crazy waves of the ocean and dashed to atoms against the rocks of usurpation and tyranny.

Why do we circumscribe and limit the executive and legislative departments? Why are you jealous of the veto—not absolute, but qualified veto—of your governor and of the President of the United

States? You say it is a kingly—a dictatorial—power; and to some extent you are right. I, too, am opposed to everything that looks like a dictatorship. I detest that decree of the Roman senate that empowered the consul "to take care that the republic received no detriment." It opens the door to unlimited oppression and misrule.

By the proposed amendment, if adopted, the line will be distinctly drawn between the bench and the jury box. The circle of Popilius will be drawn around the judge, beyond which, if he tread, the strong arm of the law—the iron sinews of the constitution—will be stretched over his head, which will make him know and feel that he cannot transgress with impunity. The judicial is the most important branch of government. It is all-powerful for weal or for woe. It may give force and effect to an enactment of the legislature or pronounce it void. It may take away your property, your life, or liberty. In a word, it is the ruling power—"still as the breeze, though dreadful as the storm." Such a functionary should have some definite duties to perform—some powerful guards around it. I do not propose to introduce a new principle. I only claim a recognition of the old. I wish to reinstate the ancient trial by jury, assigning to it its original prerogative and opening a great gulf between it and the bench. For one, I have great confidence in the body of the people. They are generally honest, particularly so are they in political affairs. There is no motive or inducement to be otherwise any more than there is to defraud themselves. Juries are selected on a short notice from the body of the people and necessarily come forth possessing all their excellent qualities and qualifications. They are usually composed of men of everyday, unadulterated, good common sense—men who in the great majority of cases are more likely to arrive at correct and just conclusions and to deal out even-handed justice between man and man than men trained solely to the technicalities of the law. I would not have you destroy any wholesome rule of action. I differ with reformers in their attempts to rub out all law and to abolish all forms of action. There is nothing clearer to my mind than that where there is any substance there must necessarily be some form. But what I complain of is that the prerogative of juries is swallowed up in the vortex of the bench. In this I repeat that reform is demanded—reform from Maine to Texas, and from Florida to Wisconsin. (Here the speaker read from Mr. Chatfield's speech made in the New York convention to form a constitution.)

"Of all the various kinds of tyranny, judicial tyranny is the most provoking and injurious to the public welfare. The judge who sits alone, cold and isolated, and exclusive, insensibly to himself, becomes a petty tyrant and is very apt to lord it over his fellow citizens and equals. . . . I have too often seen the judge, instead of giving the law to the jury, direct them to find a verdict of a particular kind, and frown down all independence, and deny all right to judge on the part of the jury, carrying their authority so far as to fine a juror for not agreeing to a particular verdict. Such usurpation renders the trial by jury a mockery; and it is but reasonable for a judge to know and to feel that there are well-defined limits to his authority where the authority of others begins."

The fact is, jurors have been and are mere machines in the hands of the court; they act merely as they are acted upon—speak as they are spoken through. They are ordered out like hounds to do the bidding of their master; whereas they should be treated like men and be permitted to draw their own conclusions from the premises presented, however such conclusions might differ from those of the court.

Mr. President, you have heard the fable of the wolf and the lamb. The wolf says to the lamb, "Quit stirring up that water; you make it muddy while I wish to drink."

The lamb informs him that it must be a mistake, since he (the wolf) is higher up the stream, and the water flows rapidly from him.

"Do you presume to contradict me to my face? Besides, you slandered me several years ago by saying that I was a ferocious wild beast."

The lamb says that is impossible, because that was before he was born—he being only six months old.

"You scoundrel! do you persist in your contradiction? By your nonsense you have already detained me from my breakfast."

At this moment the wolf snarls, tears the lamb in pieces with his claws, and directly he is undergoing the beautiful and mysterious process of digestion in the stomach of his wolfish majesty. Such, to a greater or less degree, from time immemorial, has been the relation existing between the bar and jurors, and the bench.

Courts here had in effect exercised an absolute veto power upon the verdict of juries, in the first place, by directing them how to find by charging them, by making set arguments and speeches, at

the same time—inadvertently perhaps—putting on all of the necessary grimaces peculiar to old and well-practiced advocates raised from the bar to the bench: the sneer of contempt, the leer of irony, the toss and swagger of self-sufficiency. In the second place they have had an absolute veto power by awarding new trials ad infinitum and prostrating the conclusions to which they have arrived into the dust and trampling upon them. In a word, they have ever been armed with a two-edged veto sword with which they could cut and carve the very vitals out of any cause or any victim that happened to come within their jurisdiction. Does this comport with the principles of our free institutions? Is it not kingly—dictatorial? Even with the proposed amendment incorporated in our bill of rights the bench will have power enough in all conscience, without any action of the legislature upon the subject. He would have the power of awarding new trials besides the exercise of these powers which all are willing to admit belong exclusively to his prerogative. I am satisfied that any legislature in opening the way for the court to convey his law to the jury would do it right—would do it in a way similar to that suggested in the resolution heretofore introduced in this convention upon that subject—that they would confine it to the abstract principles applicable to the cause, which are generally few, and would require that they be reduced to writing and that they be made a part of the record. By this plan there could be no dodging of the question; and any intervening error could be easily corrected in the court above.

What then, I ask, are the objections to the amendment? Do you say it is legislating? I deny it. It is only declaratory of the principle and leaves the balance "to be prescribed by the statute." The amendment adds but about two lines to the original section and comprehends all the essence and spirit of the resolution referred to. There is nothing like detail about it. The legislature in opening the mouth of the bench would doubtless do it in such a way that he would not be able to swallow the jury bodily.

But it may be contended that the end will not be attained, as the legislature will have the power to open the doors as wide as ever. Suppose, sir, that you knew that there was a tiger in yonder forest. It would concern you but little. You say, "He will hardly trouble me. There are so many others about for him to catch and to eat, I shall doubtless remain unharmed." That might be all true. But suppose by good luck you catch that tiger and secure him well in

your cage. You put an iron collar round his neck with a chain attached thereto. You will be the last man to turn him loose, because you might well suspect that he would return, prowl around your dwelling, devour your poultry and, perhaps for a change of diet, yourself; all of which would be rather an unpleasant operation to any sensible, refined, and cultivated personage. The legislature would hardly turn loose upon the world this herd of legal, judicial tigers. They might and probably would give them a liberal length of chain, so that they would enjoy a good degree of health, and so that they could exercise the prerogative which properly belongs to that department.

Are we ready to protect the trial by jury? Or shall we abolish it? Are we ready to snatch the laurel wreath from the brow of the goddess of liberty and place thereon a chaplet of hissing vipers, whose poisonous fangs shall plant and embed themselves within her very vitals? If it be the name of trial by jury that enamours you, you can get something that will do as well, perhaps better, than flesh, and blood, and bones. Erect within your temples of justice twelve hollow, graven, brazen images. Have them so constructed that they will cast an echo, and as the dicta of the bench shall be hurled at them, the same will be reflected back to record; and if you will you may call this "trial by jury."

Confident am I that every freeman would like to be able to say to every usurper, "Thus far shalt thou come, and when you step over the line which divides you from the jury box, you tread upon ground hallowed and rendered sacred by the genius of the constitution. When you cross that line, you cross the Rubicon; and the spirit of liberty will rise in her omnipotence and repel the invasion." I repeat it. Guard the right. Secure it from invasion or abolish it. Away with it. Expunge it from your constitution and your laws. Stamp upon it the image of the beast of the apocalypse and sink it into the remotest region of the bottomless pit.

Mr. Dunn did not rise to discuss the merits of the amendment in this place. He had a very great respect for the opinions of the gentleman from Grant (Mr. Lakin) upon all subjects which he attempted to discuss understandingly, but he must be permitted to say that the honorable member had not exercised his usual sound thought on the proposition submitted. This was not an appropriate place to discuss the question involved in the amendment. The legislature was the proper authority to enact regulations upon this sub-

ject, if any were thought to be desirable. But if he had a seat in such a body, and such a question should be presented for their consideration, without arrogating to himself any unusual powers he thought he could convince that body that the proposition had no merit to recommend it. He held to the doctrine that the prerogative of the judge and that of the jury should be kept separate and distinct from each other; and such was the case now. It was now the province of the judge to determine what was the law, and the duty of the jury to settle the facts. In certain criminal cases the law and facts may be referred to the jury. And it would not be difficult to convince any legislative body that questions of law are more properly referred to the court than to the sleepy juror so elegantly portrayed in the honorable gentleman's address to the convention on his amendment.

If the proposition of the gentleman from Grant could be supposed to have any place at all in the constitution it certainly could not be considered as entitled to a place in the bill of rights. It might possibly be engrossed as having some affinity with the article on the judiciary but it did not seem to belong to any portion of the constitution, being entirely legislative in its character.

He was surprised to hear his friend from Grant launch out in such a tirade against the bench, as a monster so much to be dreaded that it should be chained like a tiger. He had on many occasions witnessed the display of his legal acquirements and sound discrimination on questions of law, for which his friend from Grant was distinguished, and doubted not that he would make a very sound and useful judge if left free from the chains he had proposed for others.

The question was then put upon the adoption of the same, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 10, negative 55; for the vote see Appendix I, roll call 29].

Mr. Kennedy moved to amend section 16 by striking out the words "worship Almighty God" and inserting "enjoy religious worship," which was disagreed ["agreed" in MS] to.

Mr. Lovell moved to amend the article by striking out section 4 and inserting in lieu thereof the following: "Section 4. The rights of the people peaceably to assemble to consult for the common good and to petition the government or any department thereof shall never be abridged." And the question having been put on the adoption of the same, it was decided in the affirmative.

Mr. Bishop moved to amend the article by adding the following section:

"Section —. All foreigners shall enjoy the same rights in respect to the possession, enjoyment, and descent of property, as native-born citizens."

Mr. Bishop remarked that foreigners possessed the same rights now by the laws of the United States that were proposed to be conferred by his amendment, and he thought it but right and just that the same privileges should be secured to them under the state government.

And pending the question on said amendment, Mr. Wheeler moved that the article be recommitted with instructions to report as section 26, "Every person of foreign birth, having declared his intention to become a citizen, and every person residing in this state, having come into it a minor without such declaration, shall have the same rights to the possession, enjoyment, and descent of property as native-born citizens; and the property of foreigners who may happen to die within three years after their arrival in this state and without such declaration of intention shall not escheat to the state."

Mr. Wheeler desired the recommitment of the article, as it was the only way of engrafting the amendment upon the article, it having been once proposed and rejected. He believed many voted against it from a misunderstanding of the question—he did so himself and he believed it was so with others.

Mr. Kilbourn hoped the motion to recommit would prevail. He believed many voted under a wrong apprehension of the question when the proposition was rejected. Existing laws allowed foreigners to hold and transmit property the same as native citizens and probably would continue to do so. But circumstances might occur which would render a modification of these rights necessary, and the legislature could then restrict them to this provision. He thought the provision a safe and proper one and hoped it would be adopted.

Mr. Castleman would inquire of the gentleman from Iowa (Mr. Bishop), as he was a lawyer, whether in his opinion, in case his amendment should be adopted, the legislature could afterwards restrict the right in question at all. Mr. Bishop replied that although a lawyer he did not feel qualified to enlighten upon a question of the kind, any gentleman, who was himself a constitution-maker by profession. He submitted his amendment because he thought it would be a just and proper provision upon that subject. Mr. Castleman said he proposed the inquiry seriously and for the purpose of obtaining information; if he could not get that information he

would be obliged to vote against both propositions—the motion to recommit and the amendment of the gentleman from Iowa.

The question was then put and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 40, negative 26; for the vote see Appendix I, roll call 30].

On motion of Mr. Sanders the convention took a recess till half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

Mr. Kilbourn, from the committee on general provisions, to whom was committed No. 3, preamble and bill of rights, with instructions, reported the following as section 14, to wit: "Every person of foreign birth, having declared his intention to become a citizen, and every such person residing in this state, having come into it a minor without such declaration, shall have the same rights to the possession, enjoyment, and descent of property as native-born citizens; and the property of foreigners who may die within three years after their arrival in this state or in the United States and without such declaration of intention shall not escheat to the state [or United States]."

Mr. Schœffler moved to amend the report of the committee by substituting the following as section 14, to wit: "No distinction shall ever be made by law between resident aliens and citizens in reference to the possession, enjoyment, or descent of property."

Mr. McClellan moved to amend the amendment by striking out the word "resident," which was disagreed to. And a division having been called for, there were 18 in the affirmative and 26 in the negative.

Mr. Sanders thought it was of no consequence whether there was any provision of the kind in the constitution or not. The laws of the United States conferred upon foreigners certain rights in the premises, and he thought they could neither enlarge nor abridge those rights.

Mr. Bishop preferred the substitute. It was just what the laws of the United States conferred upon them; and he thought with the gentleman from Racine that it was of but little consequence whether or not there was any provision of the kind in the constitution.

The question was then put upon the amendment of Mr. Schœffler, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 43, negative 18; for the vote see Appendix I, roll call 31].

Mr. Richardson said he had been opposed all the while to inserting anything in the constitution on the subject. He voted for

striking out the provision the other day. He voted for the recommitment of the article this morning, for the purpose of giving an opportunity for due consideration. He was still of opinion that there should be nothing in the constitution on the subject and should vote against it.

The question was then put upon the adoption of the report of the committee as amended, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 53, negative 11; for the vote see Appendix I, roll call 32].

Mr. Whiton moved to amend section 15 by adding the following words: "arising out of or founded on a contract, expressed or implied." He said he believed the kind of debts for which imprisonment should be prohibited should be defined. He would be willing to see the section struck out entirely and the whole subject left to the legislature. But if retained, some amendment of this kind should be adopted. The legislature might find it necessary to imprison for debt in certain cases; as, for instance, cases of debt arising out of willful trespass. It was doubtful, moreover, whether under the section as it then stood a man could be imprisoned for the nonpayment of a fine imposed for a violation of a statute.

The question was then put upon the adoption of the same, and was decided in the affirmative. The said article was then ordered to be engrossed and read a third time.

The convention then resolved itself into committee of the whole for the consideration of No. 6, article on suffrage, Mr. Prentiss in the chair.

Mr. King moved to strike out the word "free" in the first line of the first section. Mr. Chase hoped the amendment would prevail. He did not know what the committee meant by the term "free." If it was intended to exclude chattel slaves, it excluded nobody, for we had no such slaves. If it was intended to exclude those who were partially enslaved, it excluded too many. Either the word meant nothing or it meant too much. Mr. Kilbourn explained the sense in which it was used by the committee. It was intended to distinguish between persons bound to servitude, non compos mentis persons, and those who had been convicted of heinous offenses against the laws, and those who were exempt from these disqualifications. The amendment was adopted.

Mr. Scagel moved to strike out the word "white" in the same line, which was disagreed to.

Mr. Folts moved to amend by striking out "six months" and inserting "one year" as the residence necessary for a qualification. Mr. Sanders opposed the amendment. He did not think they should follow the example of the older and more populous states as a matter of course. In New York the time was fixed at one year; and there it might be necessary to avoid the influence of a floating population upon their elections. Multitudes there were mere sojourners in the state, working their way westward. Here it was different. Those who came to Wisconsin came for the purpose of making this their permanent home, and six months was long enough time to test their actual residence, and that was all that was necessary.

Mr. Kilbourn said this question was discussed in the committee which had charge of the subject and the six-months rule adopted by a small majority. He had doubted as to the policy of requiring a residence of only six months. He was for placing both citizens and foreigners on the same footing in this respect, but he preferred fixing the time at one year. Most of the states required a residence of one year as a qualification to vote; and he thought that as short a time as was compatible with forming a sufficient acquaintance with the people and the policy of the country, to enable a stranger to vote understandingly.

Mr. Fox was one of the committee which had had the subject under consideration and he had felt rather indifferent as to the time which should be required as a residence—whether it should be six months or one year; but as the committee had fixed the time at six months, he hoped it would be adopted by the convention. One good effect of the shorter period, he thought, would be to encourage foreigners to file their declarations and become citizens as soon as the laws would admit of their doing so. If a residence of one year were required, they would be likely to delay one year; and if it were five years, they would probably delay five years. He thought it was a matter of some importance that foreigners who come to this country for the purpose of making it their permanent home should become citizens and fully identified with the interests of the country with as little delay as possible.

Mr. Jackson was surprised at this part of the report of the committee when he heard it read. He did not wish to see any distinction made between citizens and foreigners as to the residence which

should be required. But he would much prefer the uniform requirement of a residence of one year.

Mr. Schœffler was one of the committee from whom the article was reported, and as such he had but little choice whether the time should be fixed at six months or one year; but as the committee had reported six months, he would vote for it.

Mr. Reymert was opposed to the amendment for two reasons: first, because he thought it would be wrong to deprive the citizen of his right to vote after his actual residence had been sufficiently tested; and second, as to foreigners, the sooner they were entitled to vote the better citizens they would make.

Mr. Castleman would say in answer to the question of the gentleman from Racine, that he was in favor of a distinction being made between the foreigner and the citizen on the question of suffrage. He would make no difference, however, in regard to the time of their residence in this state. He wished no distinction in that respect. His object in calling for a division of the question was that after having voted on that part of it which related to citizens he might offer an amendment to that clause relating to foreigners. He was willing that all foreigners residing in this state at the time of the adoption of this constitution should be voters then and ever afterwards. But he preferred that a residence of one or two years should be required of foreigners arriving in our country after that time. These were his opinions; and he was willing they should go on record.

The question was further discussed by Messrs. Jackson, Kilbourn, and Lovell in favor of the amendment, and Messrs. Chase, Sanders, and Vanderpoel against it.

Mr. Estabrook moved to strike out the whole section and insert in lieu thereof a new section granting universal suffrage to those now in the territory and providing for the further regulation of the right of suffrage by law. He said that this question of suffrage had been discussed in his county as extensively, perhaps, as any other. The subject had been talked of at the polls during the canvass, and something like a general understanding had been arrived at. He had no objections to the section as it then stood, so far as the rights of foreigners were concerned; but he had made this motion out of respect to the views of a very respectable portion of the voters of his county. They had among them what was called a liberty party, and universal suffrage was their one idea. Among the resolutions

passed by the Whig convention of that county one year ago last fall was one instructing their delegates to go for universal suffrage, etc., and he had good reason to believe that one-half of the Democratic party of that county were in favor of the same principle. They wished for no distinctions in the right of suffrage on the ground of color. He was not in favor of it himself without restriction; for a slaver might come here with his slaves, and though they would be nominally free, yet having long been accustomed to his command he might control their votes and carry an election by it. There were other objections to his mind but he would not then enumerate them. But a respectable portion of his constituents did not agree with him on that question. They were respectable in numbers and respectable in intelligence, and he considered their opinions as entitled to respect. The plan embraced in his amendment was talked of extensively in his county and met with universal approbation; and he felt instructed to present this proposition to the convention and to endeavor to secure its adoption.

Mr. Cole of Grant was of the opinion that this question was not to be disposed of as readily as some gentlemen might have supposed. The question whether a foreigner could be entitled to vote at all previous to naturalization was of itself a very grave one. For his own part, he believed the extension of the right of suffrage to unnaturalized foreigners was unconstitutional. He had hoped and still hoped that they would hear something upon that floor upon that important question from a source which would entitle it to the serious and respectful consideration of the convention.

The committee then rose and by their chairman reported progress and asked leave to sit again. Leave was granted. On motion of Mr. O'Connor the convention adjourned.

FRIDAY, DECEMBER 31, 1847

The journal of yesterday was read and corrected.

Mr. Gale presented the petition of William D. Chapin and seventy-two others, praying that the name of Columbus be granted to the state of Wisconsin, which was referred to the committee on miscellaneous provisions.

Resolutions were introduced and read as follows, to wit:

By Mr. Lovell: "*Resolved,* That the committee on revision and arrangement consist of five members."

By Mr. O'Connor: "*Resolved,* That the committee on arrangement and revision be instructed to inquire into the expediency of incorporating a clause in the constitution providing for its amendment at the time and manner following: Every tenth year after the year 1850 it shall be the duty of the legislature to submit to the people at the next annual election the question whether they are in favor of calling a convention to amend and revise the constitution or not; and if a majority of the qualified electors of the state shall have voted in favor of a convention, the legislature shall at its next session provide by law for holding a convention, to be holden within six months thereafter; and such convention shall consist of a number of members not less than that of the house of representatives nor more than that of both houses of the legislature."

Resolution No. 1, introduced by Mr. Fenton yesterday, was then taken up, when Mr. Beall moved to amend the same by adding "that the resolution be referred to a committee of three with instructions to receive proposals for the printing of the journal and report the result at the earliest practical period." Mr. Judd moved to postpone the further consideration of said resolution until the twenty-second day of January next, which was disagreed to. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 17, negative 44; for the vote see Appendix I, roll call 33].

Mr. Gale moved to amend by substituting the following, to wit: "*Resolved,* That the printers to the convention be directed to print for the use of the convention 500 copies of the journal together with a sketch of the debates, and that they be allowed therefor forty cents per thousand ems for composition, forty cents per token for presswork, twenty dollars for arranging and preparing the index thereto, and no other compensation whatever, except cost of paper; and that a committee of three be appointed to superintend and direct such publication." And the question having been put upon the adoption of the same, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 17, negative 47; for the vote see Appendix I, roll call 34].

Mr. Whiton proceeded to argue at length in opposition to the resolution. He said that at the opening of the session proposals had been received for letting the incidental printing to the lowest bidder. Under these proposals various bids had been made, and the work was awarded to the lowest. With that he was satisfied. He looked no further and did not trouble himself to inquire whether the suc-

cessful bidder would or would not save himself pecuniarily in taking it. It was the principle of having work done in this manner that he was desirous of sustaining. Here, however, was a proposition started in the midst of the session to have the journal done at the usual rates. To this he was opposed, as he thought it should be done in the same manner as the incidental. He appealed to members if their own sense of consistency did not dictate that this resolution should not prevail. The printing of the daily slips had been ordered in opposition to his wishes. He did not believe that it was contemplated by those who had taken the work that this was to be done. But still as they had engaged to do all that was ordered by the convention, no good reason existed for having any relief extended to them. It was work which might or might not be demanded, and it was for the contractors to look out and provide in advance for such contingencies. He had heard no complaints made by them on this subject. The work had been done and done to his entire satisfaction, and he believed to that of every member. But as the work had been taken so low, he thought this part of it ought to be dispensed with, so as not to take an undue advantage of those who, from motives into which he had no right to inquire, had taken it to execute for nothing.

Mr. Kilbourn hoped the motion of the gentleman from Fond du Lac (Mr. Beall) would not prevail. While he had advocated and should continue to advocate the principle of letting out such work, he regarded it as but a mere act of justice to the contractors in the present case to receive a just remuneration for extra work ordered by the convention. The printing of the daily slips had not been ordered by the last convention; and the contractors in making their bid could not have anticipated that any such work would be required of them. It was not necessary work—although convenient—and might well have been dispensed with. By printing the journal with the types thus set for work which was not properly incidental and allowing a fair compensation for it the convention were merely doing themselves and the public a favor, and rendering justice to those who were doing that which they could never have anticipated would be required of them. He submitted to the members if the object contemplated by the resolution was not exceedingly desirable. A vote would be taken upon the constitution doubtless at a very early day after the adjournment, and their constituents as well as themselves wanted the journal to refer to. If it was ever necessary

it would be then. He appealed, therefore, in all confidence to members to sustain the resolution.

Mr. Whiton said the gentleman (Mr. Kilbourn) grounded his position upon the fact that the daily slips were extra incidental. But was that really so? Proposals had been made to the several offices, and bids invited. The present contractors had taken it in a lump. If they had taken it by the piece they would have got their pay. It was not unfair, therefore, for the convention to order all that they desired. They had a perfect right to do so, however hard it might bear upon the printer. For himself, he was sorry that the slips had been ordered. It was imposing a large extra expense upon the printer, which he did not think ought to be done. But as the work had been bid off in the shape it was, there was no just ground for complaint.

Mr. Judd said that the decision of the convention against his motion just submitted for a postponement of this question he did not understand as a decision on the merits of the question, but simply an indication of the wish of a majority of the members to discuss and finally dispose of this exciting question now. Upon this understanding he should proceed to state his objections to the resolution and the principal reasons upon which they were founded.

At an early day of the session the question of printing for the convention had been fully and he thought satisfactorily debated and gravely settled by a very decided majority. That decision was that all the incidental printing required and ordered by the convention should be let by contract to the lowest bidder. Bids had been received, and the lowest one accepted. This at the time he considered a perfect disposal of the whole subject, and had most ardently hoped it would not have been again agitated at a manifest waste of time. But it seemed that in this reasonable expectation he was mistaken. The convention would do him the justice, no doubt, to acknowledge that he was not responsible for its appearance here at this time, nor ought they to hold him accountable for the waste of time which its introduction might occasion. He was opposed to the resolution but should vote for the amendment offered by the gentleman from Fond du Lac (Mr. Beall) because that amendment proposed to require a "committee to receive proposals or bids from any or all the printing offices in this village for printing these journals, and to report to the convention at the earliest practicable day." He would support this motion for a reference, because it proposed to pro-

cure this work to be done in the same manner as the incidental printing had been ordered and was founded upon the same principles and based upon the same broad ground, viz., equal, open, and free competition for all persons. This was the declared motive of all those who supported the motion for procuring the incidental printing; such was his understanding, and such he presumed was the universal understanding of all who heard that discussion or understood the decision to which the convention came upon that question.

He, together with a decided majority of the convention, had supported the proposition to let the incidental printing to the lowest bidder for the purpose of getting rid of this vexed and exciting question and for the purpose of establishing a very salutary principle—a reform which he believed the people were anxious for and would hail as the harbinger of more quiet, peace, and harmony than any other vote which had yet been adopted by the convention. Having, therefore, supported that proposition, how could it be expected of him that he should now vary his practice from what he then supported as founded in principles as wise in theory as they were just and equitable in their operations? He could not act such an inconsistent part. If it was proper and right to procure the incidental printing by contract as the convention had done by the lowest bidder, surely the same reasons, the same principles, the same motives, and the same causes should lead to the same results in reference to printing the journal.

Mr. Judd said if he was correct in the premises and in the conclusions to which he had come he could not believe that any member of the convention who had recorded his vote in favor of letting the printing of the convention to the lowest bidder would now, just afterwards, and while yet in the same session, change his vote on a similar proposition for printing the journal. Such a change would clearly be a change of front, or in other words subject them to the charge of inconsistency.

In order to show that such would be the natural construction upon such a change in the vote of the convention Mr. Judd read from the Racine *Advocate* of the twenty-ninth instant an extract taken from the Milwaukee *Sentinel,* in which it is intimated that the convention had not acted in good faith, and the editor of the *Advocate* declared himself in these words: "We will not believe there is real honesty in the affair in any event." Thus it seems,

Mr. Judd continued, that these editors some time since and upon first understanding the determination of the convention in this particular gravely advanced the opinion that such a result as is now attempted would follow and that there was "no honesty" in the action of the convention on this exciting and ever troublesome matter. The vote on this question will answer the query whether the majority of the convention did honestly intend that the printing should be done under contract by the lowest bidder. He would not consent to be placed in such a position; he did not believe a majority of the convention would place themselves in such a category—nay, he did not believe that anyone who had voted for that proposition would now vote for printing the journal, as is proposed by this resolution and in violation of the other proposition to let it by contract to the lowest bidder. Here Mr. Judd qualified the above remark by saying that he was compelled to make an exception to his last proposition, as the gentleman from Milwaukee (Mr. Kilbourn) had already declared his intention to vote for giving this printing directly to the *Argus* office without first receiving proposals or making any contract upon the subject. It is true, Mr. President, that that gentleman voted for letting the incidental printing by contract to the lowest bidder and did, when that question was under discussion, declare that he would support an article providing for and making it the duty of the legislature to procure all printing required by the state to be done under contract and let to the lowest bidder—and it is no less true than strange or strange than true that that gentleman has here declared, today, that he shall give this resolution his support! How singular! What reason can be assigned? What explanation can be given? Mr. Judd said he could find none which would justify him in changing his vote; he could imagine none which would in his judgment justify others in changing theirs and he sincerely hoped none such would be found.

There were, he knew, various causes which might operate on the human mind to produce conviction, among which he would mention fear. How much of this agent had been brought into requisition in this case he did not know. A threat from the conductor of a public press, he was aware, might have an influence upon some men, but he presumed no such course had been resorted to here, and if it had been, he did not believe it could accomplish anything. Another means not unfrequently employed was flattery and persuasion, by which the mind of man was very often coaxed into the support of

measures which were at first repugnant to a sense of propriety and justice. He could not believe that any member of the convention had been approached in this way; or, if he had, he felt confident that no such means could succeed in convincing him that it was right, just, or proper to turn his back upon his former course when this same principle was under discussion. It had been said by some writer of celebrity, that "the surest way to reach a man's heart was through his stomach." This, Mr. Judd said, he acknowledged was a most powerful agent and he must admit that in his judgment it far outweighed both the other considerations put together and he was not sure that he could not be reached himself through this agent, but as he had neither been fed nor given drink in relation to this matter, he would not undertake to describe its influence or to lay down any limits to its extent.

He would now inquire of the majority of the convention (he meant those who voted to have the incidental printing done by contract and let to the lowest bidder) how they could change their votes in reference to the principle involved, by voting for the proposition now on the table. What reason could be given for it? What excuse could they render? He had already stated that certain editors had charged them with dishonesty in their previous action. And were they now about to verify the prediction? Could it be possible that they would by their votes today appropriate to themselves such odious terms and leave behind them by the ayes and noes the evidence of their own infamy? He trusted not. He could not anticipate such a result and would not pursue the argument as if he feared it.

The morning hour having expired, Mr. Castleman moved that the fifth rule be suspended for the consideration of said resolution now, which was agreed to.

Mr. Judd continued. The time which had already been expended in this unfortunate debate fully admonished him that he ought not to trespass on the patience and indulgence of the convention any longer and he would endeavor to draw his remarks very rapidly to a close. He had already alluded to the proposition to insert an article into the constitution making it the duty of the legislature to procure all the public printing done under contract, upon proposals to be submitted and bids received, giving it to the lowest bidder. Such a proposition is now on your table, and he trusted would finally

receive the sanction of the convention. If he was right in this supposition, then why, he would ask, depart from this principle in our own practice? He desired neither to build up nor to bring down any public press or its conductor. He would say he was in his heart sorry, very sorry indeed, that the successful bidders for the incidental printing had put in a proposition so low that they could not save themselves from loss on the job; but it was not his fault nor that of the convention. We did not request them to do the work for less than it was fairly worth. We requested them to say, as well as others, at what price they would do it; they sent in their bid, which was the lowest received, and it was accepted of course without comment. They made their own offer, dictated their own terms, and now he would hold them to its performance and would not in this indirect way attempt to give them a douceur to make amends for their own folly.

For himself, he said he was in earnest from the beginning; he was in earnest now; he would send this resolution to a committee which should be instructed to receive proposals for printing the journal and report them to the convention at the earliest day practicable. This would be just and equitable, proper in itself, would relieve the convention from the slightest imputation of impropriety, and would moreover exonerate the conductors of the *Argus* from all and every insinuation of having hurried and urged through this resolution, so absolutely contradictory to the previous decision of the convention. Whatever others might do, he would take great pleasure in recording his vote against this proposition. Having taken his stand in reference to this great measure of reform in accordance with the action of Congress and the legislature of the great state of New York, he felt his foot was planted upon a rock against which the rain, the winds, and the floods could never prevail.

Mr. Harvey moved to amend the amendment by substituting the following: "That the resolution of the gentleman from Crawford be referred to a committee of three, with instructions to receive proposals for printing, as indicated in the resolution; and also to receive proposals for printing the journal [alone,] and report the same back to the convention at the earliest practicable period," which Mr. Beall accepted as a modification of his amendment.

Mr. Chase said he would not make any lengthy remarks on this subject. He was not among those who saw any dishonesty in the movements of members on the question. He had opposed the resolu-

tion because he thought the work could not be done in a proper manner. He had also opposed the printing of the daily slips, believing, as he did, that it did not properly come under the head of incidental printing. The printing of the journal was necessary; and if the printers had preserved the type they had set up for the slips, in order to print the journal, they ought to know whether the work was to be done. For this reason he thought the proposition of his colleague ought to prevail—that the subject should be referred to a committee at once, to decide as to the best form and cheapest rates at which it could be done. He saw no hidden design—no ghost of Hamlet—staring out from under the proposition to print the journal. It was fair and honorable on its face; and he did not wish longer to throw extra work upon the printer to be done without pay. He was entirely satisfied with the manner in which the work had been thus far done and believed it would continue to be as well executed hereafter.

Mr. Doran was of opinion that honorable gentlemen had lost sight of the original proposition in their anxiety to maintain what they call "consistency." And he thought this the more strange, inasmuch as some of them were looked upon as "fixed facts" (to use their own words) in politics and quite above suspicion on the score of consistency. Now the debate had turned upon the propriety or impropriety of the convention altering their principles in relation to the printing; that is, as to whether it should or should not be let to the lowest bidder. The original resolution simply raises the question as to whether the journal together with a sketch of the debates shall or shall not be printed as the business of the convention progresses, so that the journal and a condensed history of the proceedings may be ready for the members of the convention on their final adjournment or within a day or so of that period, as he was informed they could be. This was a new, a separate, and distinct proposition. In character the resolution was similar to that proposed some days ago by the gentleman from Winnebago (Mr. Reed) which had in view the reporting and publishing of the debates in a separate volume. He was opposed to and voted against that resolution, because the publishing was intended to be done after the convention would have adjourned, when there would be no means of securing accuracy in the reports nor any guarantee for the qualification of the reporter. Besides, if published at all, this publishing might be long after the convention and people had ceased to be in-

terested in the result. The desired end could be far more easily and satisfactorily attained under the system now proposed, and that, too, without infringing in the least upon the consistency of former votes or the principle established by such voting. The necessity of this sketch of the proceedings was the more necessary inasmuch as the action of the convention, when in committee of the whole, according to parliamentary usage was never noticed on the journal. And it so happened that by far the greater portion of the business was done in committee of the whole. There then was this double disadvantage, that the journal was not only incomplete as a history, but contradictory and inconsistent, so that no person not thoroughly conversant with the manner of doing business could understand even the cause of the inconsistencies. This was the difficulty intended to be obviated, so that it will be at once seen by the house that the substitute offered by the gentleman from Fond du Lac has quite a different object in view. His substitute contemplates the appointment of a committee to receive proposals and to let the printing of the journal to the lowest bidder. This would be very well if the printing and publishing of the journal alone were contemplated; but as a sketch of the debates is also to be published, it would be impossible for any printer to bid understandingly, for the reason that no one can tell the length to which the debates may run; besides, the convention should hold in their own hands the power to pay in proportion or somewhat in proportion to the industry and accuracy with which the sketches of the debates or the condensed history of the proceedings should be got up and published. It was a notorious fact that a large amount of money was wasted on the publication of the journal of the late convention and that for no purpose whatever. The present arrangement provides for the publication as the business goes on and to have the journal together with a history or sketch of all that may be done in committee of the whole ready when the convention shall adjourn. Is their anything inconsistent in all or any part of this?

Now, one word as to the "motives" of those who are in favor of this resolution. On this subject much has been said, wholly uncalled for and entirely irrelevant. Editorials and newspapers have been quoted and introduced to show the opinion from abroad. Those parties have a perfect right to exercise their judgment and to scan as far as possible, whether correctly or incorrectly, the motives of members of this convention. But as long as men act right they need

fear but little from the suspicious. Nor is it any justification for honorable gentlemen here to talk about "motives," because editors at a distance talk and reason on a hypothesis. He (Mr. Doran), too, could charge "motives" and on as good if not better grounds; but as his object and aim was single and disinterested, he was disposed to judge of others by a like rule. Already the journal was being printed daily by resolution of the house, and no expense incurred; the reports of the proceedings were published as of course; so the present resolution simply contemplates the publishing of both together, which can be done by the printer who has contracted for the incidental printing at very little additional expense. No other person can compete with him under the circumstances; and for all the work it is contemplated to pay him but a very moderate compensation on executing it to the satisfaction of the convention. This is the whole cause of the alarm, of the cry of consistency, of the necessity to economize, and the questioning of "motives." Really, at bottom, there seemed to him something more than public economy or an anxiety about principle. He would vote against the substitute.

The question was then put upon the adoption of the amendment as modified, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 31, negative 36; for the vote see Appendix I, roll call 35].

Mr. Beall moved to amend the resolution by striking out the words "with a sketch of the debates daily."

Mr. Chase moved the previous question, which was not ordered.

Mr. Lovell would vote against a commitment for any purpose, but if committed at all it should be for the purpose of inquiry, with instructions to report the result of those inquiries for the information of the convention, and leave it for them to determine what action shall be taken thereon. The gentleman from Dodge had read an editorial article from the Racine *Advocate* as evidence of the opinions of the press in favor of letting out the printing by contract. He would read the balance of the article that the convention might better understand the views of the writer. Mr. Lovell then read the remainder of the article, in which the writer argued that the contract to do the incidental printing of the convention for one cent was a nullity, for want of a legal consideration. He thought the plain inference from the whole article was that the writer was opposed to the plan of letting out the printing to the lowest bidder.

Mr. Kilbourn would beg leave of the convention to make a remark or two. He was aware that this question had been discussed long enough. He might occupy an hour upon this question if he were a professional speech-maker or wished to speak against time; but he would detain the convention but a few moments. The gentleman from Dodge had said much about the principle involved in the resolution as opposed to the one which the convention had once agreed upon, to let out their printing by contract, and argued that consistency required that they should reject the resolution under consideration. He agreed to the general principle that public work should be let out by contract, and if a provision to that effect should be proposed to be inserted in the constitution, he would vote for it. But it did not follow that because the general principle was correct, it should be applied in this particular case and under the existing circumstances.

In the early part of the session they had authorized the secretary to receive proposals for doing the incidental printing of the convention. This included only such printing as was necessary to the transaction of their business, such as the articles and reports of committees. In addition to this they had ordered the daily printing of the journal upon slips, which, although a great convenience to the members, were not absolutely necessary to the transaction of business and could not, therefore, be considered as coming within the meaning of the contract. If the daily slips were considered as coming under the bid for the incidental printing, they would be requiring under the name of incidental printing the printing of the journal of the convention. If the convention ordered extra printing, which was not contemplated by the term "incidental," he could see no inconsistency in paying a fair price for it. Suppose the convention had ordered the journal printed in octavo form instead of the form in which it was presented. Would any gentleman pretend that it would be fair to require the work under the bid for the incidental printing? He did not believe it would. At any rate he would not so take advantage of the printer or of a mechanic of any kind. The gentleman from Dodge had appealed to the fears of the convention by alluding to the opinions of the press. If he expected to intimidate him in this way he would fail; and he believed the convention would not be intimidated by any such opinions. They had ordered work which they had no right to under the contract; and he believed their constituents would justify them in paying a fair, honest price

for it. The journal must be printed in a permanent form for preservation and it could be done cheaper by this plan than by any other.

Mr. Estabrook thought the discussion had taken a wrong direction. The question was not whether they should hold the printers of the convention to their bond and, like Shylock, demand their pound of flesh. The question was, first, whether the journal should be printed and bound for preservation, and, if so, the next question was not merely how it could be done the cheapest, but how it could be done the best. He referred to the journal of the last convention. Members would find but little satisfaction in referring to it for information. It was with the greatest difficulty he could get any definite information from it. It did not show that any constitution had been adopted. It did not contain even a copy of the constitution nor the names of the men who signed it. It was entered that such and such parts of it were adopted; but what became of the whole no one could tell from the journal. It appeared that $400 was paid for making out an index to the book; and its chief excellence was that it was as good an index for any other book as for that.

It had been contended that the journal could not be done correctly by the plan proposed. He would like to know why it could not, when there were sixty-nine members present and each a committee of one to read proof. Much had been said there about consistency. He would again quote from Shylock: "I thank thee for teaching me that word." Gentlemen who talked so much about consistency would have them believe that they were the veriest patterns of consistency in the world. He wondered if such gentlemen had always been as consistent as they now desired the convention to be. The fact was, the journal should be printed. They had already ordered it printed in daily slips and were bound to pay a fair price for the work. The advantage intended to be secured by the resolution, as he understood it, was that by ordering the extra copies in octavo form, the printers could save the matter set up for the daily slip until enough had accumulated for a form of the journal, and then, by running the matter over and revising and correcting it, the book journal could be struck off without the expense of a new composition. He was in favor of connecting with the journal a sketch of the debates. He considered them nearly as important as the journal itself, as they would show the reasons which governed members in their votes upon all important questions. He

did not see that any principle would be violated or any inconsistency involved in adopting the resolution.

Mr. Whiton would ask gentlemen if they supposed the legislature would consent that the printing of their debates should be paid for out of the treasury of the territory.

Mr. Reed hoped the amendment would not prevail. He made a motion at an early day in the session for the appointment of a competent reporter to take sketches of the debates for publication and was still anxious that the debates should be preserved in some form. He believed, in fact, that the journal would be of but very little value without the debates. It would not show the sentiments of the members upon any question. It would take no notice of anything done in committee of the whole, and it was common for the most important amendments and discussions to arise in that committee. The journal of the last convention, as had been remarked, was of but little value from the fact that it afforded no clue to the sentiments of the members except by the votes they had given. The debates as reported were indeed imperfect, but imperfect as they were, they were better than none. They would show the sentiments of the members upon all important questions and be of great value for further reference.

Mr. Whiton inquired whether the debates were to be interspersed through the journal; for, if so, he thought they would be a great inconvenience in referring to the journal for information. A difficulty might also arise with reference to the correctness of the debates, and he did not see how the accuracy or inaccuracy of the sketches was to be determined. If spread upon the journal, they must be read every morning by the secretary. A member might rise and say that he was misrepresented—that he did not say what he was reported to have said. Another member might insist that he did say thus and so and that the report was correct, and who was to decide the matter between them? He thought if the debates were printed at all they would find it necessary to print them in a separate volume. The gentleman from Winnebago (Mr. Reed) had said that he would prefer imperfect reports to none at all. For his own part he would not. A member might be misrepresented; and he would ask the gentleman whether it would be better to be misrepresented than not represented at all.

Messrs. Beall and Judd pointed out some alleged errors in the report of the debate in committee of the whole on Mr. Martin's

amendment to the bill of rights, relative to exemptions. Mr. Doran maintained that the report of that debate as contained in the *Argus* was substantially correct.

Mr. King said it seemed to be taken for granted that whatever inaccuracies might occur in the daily reports they must necessarily be perpetuated. The difficulty might be obviated without the trouble of correcting them then. Some little time must elapse between their first publication and their being put in a permanent form; and in the meantime any member could call on the publishers and point out any errors which might have occured in relation to his remarks upon any subject; and he would venture to say that the corrections would be made.

Mr. Castleman said his opinions on the question had been changed from hearing the remarks of the gentleman from Milwaukee (Mr. Doran). It seemed from his remarks that it was not contemplated to publish a full report of the debates, but only a sketch, which he understood to mean a part of the debates. If but a part of them were to be published, he would wish to know before voting for the motion what part of them. It seemed that the publishers were to be at liberty to publish just such portion of the debates as suited them. Their press was a party press and would doubtless continue to be. They might therefore publish such a sketch as was calculated, as had been remarked here on another occasion, "to give a correct tone to public sentiment." He would, therefore, vote against the resolution.

The question was then put upon the motion of Mr. Beall, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 38, negative 33; for the vote see Appendix I, roll call 36].

Mr. Sanders moved to refer the resolution to the committee on expenditures. Mr. Lovell moved the previous question, which was not ordered. The question was then put upon the motion to commit, and was disagreed to. And a division having been called for, there were 20 in the affirmative and 32 in the negative.

Mr. Gale moved to amend the resolution by adding "that there be allowed the sum of forty cents per thousand ems, and forty cents per token for presswork, twenty dollars for preparing the index, and that a committee of three be appointed to direct and superintend such printing," which was disagreed to.

Mr. Whiton moved to amend the resolution by adding the following proviso: "*Provided*, That if any member of the convention shall require the suppression of any remarks he may make, the same shall not be published."

Mr. Judd moved that the convention take a recess until half past two

o'clock which was disagreed to. And a division having been called for, there were 25 in the affirmative and 33 in the negative.

The question was then put upon the adoption of the amendment, and was decided in the affirmative.

Mr. Beall moved a call of the convention, which was ordered, and Messrs. O. Cole, Fowler, Kennedy, Lakin, and Stedman reported absent. The sergeant at arms was sent to procure the attendance of the absentees.

Mr. Lyman moved that Mr. Stedman be excused from attendance, which was agreed to.

Pending the report of the sergeant at arms, on motion of Mr. Lovell all further proceedings under the call were suspended.

Mr. Schœffler moved to amend the resolution by striking out all relating to the binding of the journal and inserting after the resolution the following: "*Resolved*, That the committee on expenses be instructed to receive proposals for the binding of the journals and to contract with the lowest bidder," which was disagreed to.

The question was then put upon the adoption of the resolution as amended and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 34, negative 31; for the vote see Appendix I, roll call 37].

On motion of Mr. Fenton the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

Mr. Richardson, from the committee on engrossment, by leave reported as correctly engrossed No. 3, preamble and declaration of rights.

The said preamble and declaration were then read a third time, and the question having been put upon the passage of the same, it was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 61, negative 3; for the vote see Appendix I, roll call 38].

The convention then resolved itself into committee of the whole for the further consideration of No. 6, article on suffrage, Mr. Prentiss in the chair. And after some time spent therein, the committee rose and by their chairman reported the same back to the convention with sundry amendments thereto.

The question being on concurring in the amendments of the committee to said article, Mr. Kilbourn called for a division of the question. The first, second, third, fourth, and fifth amendments, which were: "First. Strike out in the first line of section 1 the word 'free.'

"Second, after fourth class insert fifth class, as follows: 'Fifth. Civilized persons of Indian descent not belonging or attached to any tribe and persons of Indian blood once declared to be citizens of the United States by act of Congress, any subsequent act of Congress notwithstanding.'

"Third. Strike out second section.

"Fourth. Strike out fifth and sixth sections.

"Fifth. Amend section 8 by striking out in second and third lines the words 'in any military or naval place,' " were then severally concurred in.

The question was then put upon concurring in the sixth amendment, which was to strike out sections 9 and 10. Mr. Lovell called for a division of the same. And the question having been put on striking out the ninth section, it was agreed to. And a division having been called for, there were 31 in the affirmative and 16 in the negative.

The question was then put upon striking out the tenth section, and was agreed to.

Mr. Harvey moved to amend the article by adding the following: "Section —. Laws shall be passed excluding from the right of suffrage all persons who have been or may be convicted of bribery, or of larceny, or of any infamous crime, and for depriving every person who shall make or become directly or indirectly interested in any bet or wager, depending upon the result of any election, from the right to vote at such election."

Mr. Lovell moved to amend the amendment as follows: "Any elector who shall directly or indirectly make any bet or wager upon any election shall be disqualified to vote at such election; and it shall be a part of the oath to be taken by any voter whose right to vote shall be challenged, that he has not directly or indirectly made any bet or wager on the election at which he offers his vote," which was disagreed to.

Mr. Kilbourn moved to amend the amendment by striking out the word "shall" in the first line and inserting in lieu thereof the word "may," which was agreed to. And the question having been put upon the adoption of the amendment as amended, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 64, negative 0; for the vote see Appendix I, roll call 39].

Mr. Jackson moved to amend section 1 by striking out the words "six months" and inserting "one year."

Mr. Gale moved that the convention adjourn, which was disagreed to. And a division having been called for, there were 31 in the affirmative and 31 in the negative.

The question was then put upon the adoption of the amendment. Mr. Sanders called for a division of the question. And the question having been put upon striking out, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 26, negative 39; for the vote see Appendix I, roll call 40].

Mr. Chase moved to amend the first section by striking out the word "white" in the first line. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 22, negative 43; for the vote see Appendix I, roll call 41].

Mr. Richardson moved that the convention adjourn, which was disagreed to.

Mr. Sanders moved that the convention adjourn until Monday next. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 28, negative 37; for the vote see Appendix I, roll call 42].

Mr. Dunn moved to amend the article by striking out section 1 and inserting in lieu thereof the following: "In all elections every white male citizen

above the age of twenty-one years, having resided in the state one year next preceding any election, shall be entitled to vote at such election; and every white male inhabitant of the age aforesaid who may be a resident of the state at the time of the adoption of this constitution shall have the right of voting as aforesaid."

And pending the question thereon, on motion of Mr. Dunn the convention adjourned.

SATURDAY, JANUARY 1, 1848

Prayer by the Rev. Mr. Lord.

The journal of yesterday was read and corrected.

The President presented a communication from the Secretary of the territory, containing returns of the census of Lafayette County, which was referred to the select committee to whom the former returns were referred.

Mr. Case moved a reconsideration of the vote taken yesterday on the adoption of a resolution relative to printing the journals of the convention [and that the resolution be laid on the table].

Mr. Beall inquired if the motion were laid on the table, whether it could be taken up at a future time. The President thought it could not. Mr. Judd questioned the correctness of the decision. He thought the rule would allow of its being called up at any time. The President said that on referring to the rule of the convention he found it differed somewhat from the common rule in such cases. The resolution could, if laid upon the table, be taken up thereafter. Mr. Beall inquired if it could be taken up by a majority, or whether it would require a two-thirds vote. The President decided that it could be taken up in order by a majority vote, but that when there was any other business before the convention it would require a two-thirds vote. Mr. Case withdrew the motion to lay on the table.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 32, negative 32; for the vote see Appendix I, roll call 43].

Mr. Root introduced the following resolution, which was read, to wit: "*Resolved*, That so much of the resolution adopted in convention on the thirty-first ultimo as provides for the publication of the 'sketches of debates' be and the same is hereby rescinded: *Provided*, however, That such debates may be published in connection with the journal of the convention, at the option of the printers and at their own expense."

Mr. A. G. Cole moved the suspension of the fifth rule for the adoption of said resolution now, which was disagreed to. And a division having been called for and ordered, there were 28 in the affirmative and 19 in the negative.

Resolution No. 2, introduced by Mr. O'Connor yesterday, was then taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

Resolution No. 1, introduced by Mr. Lovell yesterday, was then taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

No. 6, article on suffrage, was then taken up.

Mr. Dunn said as the amendment proposed a radical change in the article reported by the committee it might be considered due to the committee and due to himself to state the reasons which had induced him to offer it. But in doing so he did not expect to offer anything new on the subject. It was doubtless within the recollection of most of the members of that body that the questions involved in the amendment had been discussed at large at different times within the last few years and by the ablest men in this country. He would not, therefore, attempt to bring any new arguments to bear upon the question but would confine himself to a review of some of the reasons and arguments which had been produced by others and which were more or less familiar to all. He was aware that there was in the convention a very strong current of opposition to the amendment. He doubted not that a very large portion of the convention, from the force of circumstances, differed with him upon this important subject, and he would not question the sincerity of their opinions or the purity of their motives.

Before proceeding further he wished to define his position in reference to that class of persons who would be immediately affected by the adoption of the amendment he had submitted. And he could truly say that all his sympathies were with the foreigners. His father was a foreigner—a native of Ireland—and as might be expected by nature and from early associations his feelings and sympathies had become deeply enlisted in behalf of that magnanimous, intellectual, and patriotic people, who had been so long oppressed and trodden down by iniquitous laws and tyrannical misrule; and that sympathy had extended itself to natives of other foreign countries who had come to our shores in search of those privileges and blessings which were denied them in the countries from whence they came; and he would not withhold from any of them the privileges of citizens any longer than would seem to be for the highest good of all concerned. He believed his views had been misunderstood on this subject. An impression had obtained to some extent that his objections to the section proposed to be stricken out were based upon constitutional grounds. But a mere glance at the amendment under consideration would convince anyone that it was founded upon no constitutional objection to the section as it then stood, for the amendment itself proposed to confer the right of suffrage upon the unnaturalized foreigners to a certain extent. He did not pretend that the federal constitution interfered

at all with the right of the states to determine the qualifications of electors within their limits. The constitution of Illinois conferred the right to suffrage upon all foreigners within the state after a residence of six months or one year—he did not recollect which. Congress ratified their constitution and thus distinctly recognized the right of the states to confer the right of suffrage upon that class of persons. He based his objections to the extension of the right of suffrage as contemplated by this article upon entirely different ground—upon the ground of sound policy and a due respect to the laws of Congress and the general practice of the states.

The fourth specification in the eighth section of the first article of the federal constitution declared that Congress should have the power to pass uniform laws of naturalization. It was deemed necessary and proper that Congress should possess this power, while it was thought more convenient and proper that the states should severally fix the qualifications of electors within their respective limits. The amendment proposed to confer equal suffrage upon all who were now in the state, but to restrict it in respect to all who should come into the state subsequent to the adoption of the constitution to citizens either native or naturalized. It might be asked why such a distinction should be made. He would explain the reason. By the laws of the territory foreigners had already been allowed to vote upon questions of state government. They had voted for the delegates then assembled and were represented upon that floor. They would be immediately interested in the first laws which would be passed by the state legislature. They would be subjected to heavy taxation to defray the expenses of forming the state government and putting it in operation; and for these reasons, if any class of persons could claim special indulgence or any circumstances justify a deviation from sound policy, it was this class of persons and the circumstances in which they were placed.

No intelligent foreigner who might come into the country subsequent to the formation of the government would say that the restriction contemplated by the amendment bore hard upon him, because he had had no agency in the organization of the state government and had not borne the first and most onerous burden of taxation to defray the civil list of the government.

It was due to Congress that our constitution should show some respect to the views of Congress as expressed in their laws. It seemed necessary to establish some uniformity in respect to con-

ferring the rights and privileges of citizens upon foreigners. Congress had thought proper to establish prudential rules and regulations in conferring the immunities of citizenship. They had made it necessary that the foreigner should declare his intentions of becoming a citizen two years in advance. He must have been in the country five years before his citizenship could be perpetuated and, more important than all, it could not even then, until he had proved a good moral character, his attachment to our government, and sworn allegiance to it and renounced allegiance to all others. If Congress had considered all these things necessary to the obtaining of the rights of citizenship, was it wise in the convention to depart so widely from those rules in conferring the important right of suffrage? He did not believe that it was.

He might be called a sleeper and one who was far behind the age. It had been said of others upon that floor and it might be said of him, but he would here remark that they had better all wrap themselves in their wakeless shrouds and lie down forever, than adopt all the new-fangled theories of the day and engraft them on the constitution as the permanent and fixed law of the state. He would advise that we proceed slowly and cautiously in reform, particularly in organic or constitutional law, and look through the vista of new theories on the right and left to the goal at which we aim, and be satisfied that it is a firm basis upon which to rest our permanent liberty and consequent prosperity. We have a national character for consistency, propriety, and uniformity of general law to sustain; and each state is equally interested in the great object. Furthermore, he would ask the convention to recollect that we are not now performing any ordinary act of legislation which may be repealed at any time when found to operate prejudicially, but we are declaring a great, fundamental, and permanent principle of constitutional law which may probably act not only upon the present but on future generations for more than fifty or a hundred years.

He would here notice an objection which, from what he had heard, would doubtless be urged against the proposed amendment in this convention. It was that the amendment offers no inducement to foreigners to take the initiatory step. He would go with gentlemen in holding out every inducement to foreigners to become citizens; and this is the reason why he used the term "citizen" in the first clause of the amendment in a qualifying or restrictive sense.

A declaration of intention as proposed in the original section amounts to nothing unless followed by consummation. And if the alien can secure full privileges and immunities by a simple declaration of intention, many, very many, would change their intentions; and they have a right to do so. They will remain in our state under the happy influence of just and beneficient laws, enjoying all the privileges of citizens, until they have amassed a fortune; then they will return to the fatherland to enjoy it. Require of them to become citizens according to the provisions of the act of Congress before they are clothed with their privileges and you then present a strong inducement to become citizens—real, substantial citizens—of our country. They will then each feel a deep interest in its prosperity, for they will have sworn allegiance to it and abjured allegiance to all other countries. We should desire to make citizens of the foreigners, those who have a deep interest in common with all other citizens in the prosperity of our country. We certainly should not desire to do less.

If a foreigner can obtain these great and inestimable privileges upon short residence and bare declarations of intentions, he will not place the proper value on them, for they are obtained so very cheap. Require him to comply with the legal forms, requisitions, and solemnities, so appropriately prescribed in the acts of Congress, and when thus made a citizen the great boon will be most highly valued according to its real worth. This view, it appeared to him, is the one which would be taken by most intelligent foreigners possessed of self-respect. The suggestions of experience are instructive and salutary in matters of legislation as well as in all other pursuits of life. He would always listen to them. Illinois, profiting by the experience of twenty-nine years on a principle in her constitution similar to the one proposed to be stricken out, had in her late convention substituted therefor the identical proposition now under consideration; they had done so with remarkable unanimity of the two great parties, and those parties were represented in convention by the very best talent of the state—by talent entitled to high consideration in any age or country.

His purpose in addressing the convention was to explain the object of his amendment and offer some reasons which were conclusive with him in favor of its adoption. If he had succeeded in presenting the question intelligibly, so that a direct vote could be taken on it, he had effected his object.

Mr. Rountree wished before the question was taken to express his views briefly in relation to the amendment. He regarded the question involved in the amendment as of the highest importance; and it was so regarded in the county which he had the honor in part to represent. It was not there a party question. Both of the political parties, foreigners and all, were in favor of the principles of the amendment and opposed to the principles of the section as it then stood. They had a mixed population of citizens and foreigners and an intelligent population. This question of suffrage had been much discussed among them; and he believed that citizens and foreigners of both of the great political parties were very generally agreed on the substance of this amendment. They were willing to go thus far and no further. He did not believe that to make the naturalization laws the terms upon which the right of suffrage should be bestowed upon foreigners would be requiring more of them than they should receive in return. He believed the same pre liminaries should be required as qualifications for the right of suffrage as were required for the rights of citizenship. Nearly every state in the Union required citizenship as a qualification for the right of suffrage. And was it to be presumed that they were so much wiser than all those who had gone before them?

He believed the stability of our government, laws, and institutions depended upon the guards which were placed around the elective franchise. He did not believe that those who were ignorant of our language and still more ignorant of our laws and our public men could be qualified in the short period of six months, nor in one year, to vote understandingly. It was impossible. Native citizens were required to reside in the country twenty-one years before being allowed to vote. He had not heard anyone, not even the most progressive, propose to shorten the term of residence required of the native citizen. No one had moved to reduce the term required of a citizen from twenty-one to eighteen or sixteen years, and yet he believed that a native citizen was as well qualified to vote understandingly after a residence of sixteen or eighteen years as the foreigner could be after a residence of five years.

There appeared to be a great scramble to see who should be foremost in advocating a six-months' residence, and it was evident to his mind that it was all for political effect. A proposition was made the other day when the article on the executive was under consideration to dispense with the qualification of citizenship for

the office of governor, and it was rejected by a vote of at least two-thirds of the convention. Where was the consistency of requiring citizenship as the qualification for the office of governor, while nothing but a declaration and a residence of six months was required as a qualification for [voting for] that officer? He thought in all cases the elector and the officer voted for should possess the same qualifications, for the officer was but the agent of the elector and was expected to carry out his wishes; and what a man had a right to do by his agent he should have a right to do by himself.

As he before remarked, nearly all the states in the Union required citizenship as one of the qualifications of an elector; and the extension of the elective franchise as contemplated by the article as it stood would have the effect to delude the foreigners in respect to the extent of their rights. They might remain here for twenty years, perhaps, without becoming naturalized and suppose all the while that they would possess the same rights should they remove to any other state, when in fact they could not carry any one of the rights which might be conferred upon them by our constitution one inch beyond the limits of the state.

Gentlemen might expect to make political capital out of this question. How that might be he did not know nor did he care. His object was not to legislate in view of the present moment alone. In enacting the fundamental law of the state they should have reference to the future as well as to the present. Their object should be to frame a constitution which would bear the scrutiny of reason and stand the test of time, and not to build up this party or that, or to make great men out of little ones. At any rate he would not be swerved in his opinions or vote by any such considerations.

Mr. McDowell rose to express his concurrence with the views just expressed by the gentleman from Grant. His constituents had much feeling on this subject, and that feeling was in accordance with the spirit of the amendment offered by the gentleman from Lafayette, and he could not consent to go back to his constituents with having barely recorded his vote in favor of it. He had voted against the section as it then stood, all the way through, and should continue to vote against it. He could say with the honorable mover of the amendment that his sympathies were all with the foreigner and for the same reasons: His father was a foreigner and an Irishman. But he believed that it would be best for the foreigner and

best for the country that, as a permanent rule, citizenship should be required as a qualification for an elector.

Mr. Gifford said that he objected to the amendment under consideration for many reasons. But he would not trouble the convention by giving them at length. The provision, if adopted, he believed would be unjust and oppressive in its operation. The first section would compel those who had the misfortune to be born out of the Union to reside here five years before they could exercise the privilege of voting on any question. They would thus be debarred from having a voice in the government to whose authority they were obliged to succumb, and refused the privilege of saying a word either as to the amount of taxes which should be levied upon them or as to the purpose for which their money should be appropriated, thus establishing the monstrous anomaly in a republic of taxation without representation.

The second section allows all those who are fortunate enough to be here when the constitution is adopted to participate at once in all the rights and privileges of citizenship. Such a provision he regarded as arbitrary and despotic. On what principle could such a section be sustained? If there was any, he had failed to perceive it. The hapless foreigners, self-exiled from their own country, braving the perils of the ocean to participate in the blessings of our own, would be cut off, perhaps by the difference of a single day, by the mere accident of a gale of wind upon our lakes which might prevent their landing until after the constitution was adopted. Was such a provision consistent with the genius of our institutions or in accordance with the great charter of our rights? On the contrary, was it not manifestly gross and tyrannical thus to place the destiny of multitudes on the happening of a mere contingency? He was in favor of planting the rights of our citizens on a broader basis and of securing them by a constitutional guarantee which would render them perpetual. He could not consent that such a provision should even be proposed without expressing the strong indignation which he felt.

It was true the proposition came from high authority; but that could not blind him to its enormities. It had been said, not proved, that foreigners would be satisfied with such a provision. They did not ask for the liberal provisions which this was designed to supersede. He denied it. Tame indeed would be their love of liberty if this were true. The great inducement for their emigration was that

they were coming to a country where perfect equality prevailed, where artificial distinctions were unknown, and where man, made in the image of his Maker, however long down-trodden and oppressed, could stand erect and feel indeed that he was a freeman and among the free.

We have been told that the object to be gained by free suffrage was purely venal—that it was a hobby, a device to catch voters. This reproach had especially been cast upon members residing in the eastern part of the territory, as if they alone arrogated to themselves any extraordinary power in the deliberations of this body. It was possible gentlemen would find when the vote was taken that they did not stand single-handed and alone. Their aims were higher, their principles loftier, he trusted, than would be inferred from so unworthy an imputation.

He would remark, in conclusion, that in view of the vast tracts of our territory yet unsettled, and which must be, if at all, by the hardy foreigners from Europe, the operation of the proposed amendment would be in a few years to throw the whole power into the hands of a minority of the people, thus adding another to the gross violations of principle which it would effect, that a majority should govern. He had not designed to occupy the time of the convention with any remarks, but his constituents would not let him sit there when such a proposition was pending without entering his protest against it.

Mr. Fox said the amendment proposed, it might well be imagined, did not meet his approbation. Having been born in Ireland, he was prepared to judge somewhat experimentally of the effects which the provision would have on foreigners, should it be adopted. He would ask members to pause and deliberate well before they acted. Under its operation five years' residence would be required before any would be admitted to citizenship. With the living flood that was now yearly pouring into our borders, what a host would be disfranchised! From the census just taken it appeared that the increase of population during the past year and a half was little less than sixty-five thousand! At the same ratio he left members to judge of the myriads who would in a few years be deprived of the privilege of taking any part in public affairs. They would have to submit to taxation for five years—submit to having their money appropriated and expended—to being unrepresented, and to having

no voice in the settlement of any measure of whatever nature, no matter how nearly it might concern them.

Was this right? He appealed to the judgment of all to decide. Was it sound policy? The influx of population from abroad was induced in [EDITOR'S NOTE: There is an apparent omission here, which occurred also in the first printed edition].

It was far better, he apprehended, for us to extend to them, at once, upon their arrival, the full measure of blessings bestowed by our free government. This was the only means of arousing them to proper efforts to comprehend our system. When they had a direct interest, there was a stimulus which would constantly spur them on—which would induce them to educate their children so as to fit them for places of usefulness in the country of their adoption. But should this motive be taken away, as it would be by a long residence without any participation in public affairs, the effect, to his own knowledge, was the reverse of all this. Should the proposition receive the sanction of the convention and be incorporated into the fundamental law, it would make many citizens who would never otherwise become such, while it would preclude multitudes who otherwise would make useful citizens and become the most stable and industrious part of our population.

He had heard enough about "ignorant foreigners" both here and elsewhere. It was true and to be lamented that many of them were ignorant. But what could be the injury of allowing them to vote? There were but two great parties in the country, and they must necessarily ally themselves with one of them. The demagogues of either one were always ready to claim that the liberties of the country depended exclusively upon the success of their own side. The contradictory statements of these men necessarily led to investigation—investigation to reading and reflection—and this was, of all other objects, most desirable, since they finally allied themselves with that side which they deemed most likely to subserve the best interests of the nation.

He could not go back to his constituents with such a provision in the constitution if it could be avoided. It was never contemplated by the patriots of '76 that their descendants were to close the door to the free admission of foreigners who fled from the despotisms of Europe and sought an asylum in this happy country. It was better far to make them citizens, to have them feel and know that they had a permanent interest to sustain and the welfare of the country

to subserve. Should it be incorporated, he had a presentiment that the constitution when submitted would meet with a severe reproval at the hands of the present foreign voting population.

Mr. Brownell addressed the convention as follows: It forms no part of my desire to excite discussion, and yet the mere record of a silent vote might seem to imply a want of expression. All past reflection, then, sir, has but served to assure me that the principles upon which rest the institutions of this country are true enough, broad enough, and secure enough not to need the restrictions proposed in this amendment, and I must say that I only lack for the spirit of real progression through the aid of those influences which shall tend to remove the arbitrary and the restrictive from the calendar of government affairs. The struggle begun with the birth of this nation and now going on between the institutions of Europe and those of this country is one of no doubtful issue. I can regard the stability of our institutions as no longer an experiment, and as the legitimate object of all policy in government affairs to be, to secure the advantage and ameliorate the condition of the citizen, and those we invite to become such, by inculcating a knowledge of our institutions and of their true interests. I know of no better way to secure or promote this humane object than by inviting them to take an early part with us. Participation is the only efficient school of instruction. The maximum of time is a question of expediency, changing with the progress of political science.

I know political excitements and abuses of the elective franchise have arisen in one state by the adoption of franchise laws less restrictive than those contained in the section proposed to be stricken out; but the advantages resulting are in my opinion more than a compensation. And I will predict that the first change in the naturalization laws of the United States will be to lessen and not to increase their term of probation. I shall therefore vote against the amendment.

Mr. Cole of Grant addressed the convention in favor of the proposed amendment. He appealed to members to drop all selfish, political considerations, and by sustaining the measure do a permanent good to the country and its institutions. He regarded it as a true conservative principle and as a fair compromise upon which all parties ought to rally with entire unanimity.

Pending the question on the amendment of Mr. Dunn, on motion of Mr. Richardson the convention adjourned.

MONDAY, JANUARY 3, 1848

Prayer by the Rev. Mr. Lord.
The journal of Saturday was read.

Mr. Whiton called the attention of the convention to an erroneous statement in the report of the proceedings of the convention for Thursday, December 30, contained in the *Argus*. He (Mr. Whiton) was represented as having moved the recommitment of the article then under discussion with an amendment. He had in fact made no such motion.

The President observed that the error did not occur in the journal. The motion was there correctly credited to Mr. Wheeler.

Mr. Whiton said that he so understood it. But as under the resolution adopted on Friday these reports would go out to the world as authentic, he wished that what he might say on this floor hereafter should not be reported.

Mr. Chase presented two petitions of inhabitants of Fond du Lac County praying that a homestead exemption be secured to citizens by the constitution, which were with those already received referred to the select committee on that subject.

Mr. King, from the select committee to whom was referred the abstract of the late census, made the following report, to wit:

"The select committee, to whom were referred the returns as far as received of the recent census of Wisconsin with instructions to prepare the same for publication, with the addition of the census, by counties, taken in June, 1846, herewith submit an abstract of the returns by [towns or precincts for December, 1847 as well as the returns by] counties for 1846.

"Returns have been received from all the counties, except Brown, Winnebago, St. Croix, Chippewa, and La Pointe. The aggregate population of the territory, as far as heard from, is 202,853. The following is the estimated population of the five counties from which no returns have been received:

Brown	2,800
Winnebago	2,400
St. Croix	1,900
Chippewa	400
La Pointe	500
	8,000

"Assuming this estimate to be correct, the total population of our territory on the first of December, 1847 was 210,853.

"It is possible that returns may yet be received from the five counties above named; but as the estimate of this population is believed to be sufficiently accurate to insure a fair apportionment of representatives, your committee respectfully recommend that three hundred copies of the returns herewith submitted be printed for the use of the convention and the same be referred to the committee on legislative and administrative provisions without waiting for those from Brown, St. Croix, Winnebago, Chippewa, and La Pointe.

RUFUS KING
J. T. LEWIS
A. WARDEN
Committee"

ABSTRACT OF THE POPULATION OF THE TERRITORY OF WISCONSIN, ON THE FIRST DAY OF DECEMBER, A. D. 1847, BY TOWNS AND COUNTIES

Names of Counties	Towns and Precincts	Population of towns	Total
BROWN	Green Bay	1,416	
	De Pere	468	
	Kaukalin	385	
	Howard and Lawrence	645	
			2,914
CALUMET	Manchester	575	
	Stockbridge	491	
			1,066
COLUMBIA	Columbus	949	
	Dekorra	201	
	Wyocena	475	
	Le Roy	980	
	Dyersburg	466	
	Winnebago Portage	164	
	Pleasant Valley	203	
	Lowville	253	
			3,791
CHIPPEWA	No returns		
CRAWFORD	Prairie du Chien	892	
	Mount Sterling	223	
	Prairie La Crosse	74	
	Black River Falls	153	
	Black River	67	
			1,409
DANE	Madison	1,166	
	Sun Prairie and Windsor	2,764	
	Rutland and Oregon	1,050	
	Cross Plains, Clarkson, and Springfield	1,092	
	Rome	852	
	Dunkirk	539	
	Verona and Montrose	800	
	Christiana and Albion	1,362	
	Greenfield	361	
	Cottage Grove	949	
			10,935
DODGE	Ashippun	750	
	Burnett	677	
	Beaver Dam	1,034	
	Chester	563	
	Calamus	550	
	Clyman	633	
	Emmett	1,006	
	Elba	938	
	Fox Lake	507	
	Fairfield	879	
	Hustisford	483	
	Hubbard	1,249	
	Lebanon	806	

CENSUS *(Continued)*

Names of Counties	Towns and Precincts	Population of towns	Total
DODGE	Lowell	1,002	
	Le Roy	1,234	
	Portland	686	
	Rubicon	505	
	Trenton	820	
	Williamstown	584	
			14,906
FOND DU LAC	Oakfield	410	
	Waupun	936	
	Alto	339	
	Byron	657	
	Fond du Lac	1,033	
	Taycheedah	541	
	Seven Mile Creek	306	
	Ceresco	326	
	Rosendale	689	
	Metomen	460	
	Calumet	1,054	
	Forest	311	
	Auburn	353	
			7,409
GRANT	Smelsers Grove	470	
	Jamestown	453	
	Beetown	1,230	
	Cassville	383	
	Patch Grove	803	
	Fair Play	403	
	Potosi	771	
	Pleasant Valley	843	
	Waterloo	179	
	Hurricane	368	
	New Lisbon	226	
	Lancaster	700	
	Hazel Green	1,278	
	Millville	67	
	Platteville	2,714	
	Head of Platte	358	
	Centerville	218	
	Muscoda	78	
	Fennimore Grove	179	
			11,720
GREEN	Monroe	2,063	
	Sugar River	1,400	
	Greenville	816	
	Colimina	767	
	Decatur	654	
	Millcreek	787	
			6,487
IOWA AND RICHLAND	Ranges No. 1 and 2	2,832	
	Richland County	235	
	Mineral Point	2,046	

CENSUS *(Continued)*

Names of Counties	Towns and Precincts	Population of towns	Total
IOWA AND RICHLAND	Porters Grove	542	
	Dodgeville	1,421	
	Yellowstone	287	
	Arena	263	
	Percussion	337	
			7,963
JEFFERSON	Aztalan	840	
	Cold Spring	495	
	Concord	478	
	Farmington	346	
	Hebron	457	
	Ixonia	870	
	Jefferson	1,088	
	Koshkonong	1,161	
	Lake Mills	666	
	Oakland	619	
	Palmyra	647	
	Sullivan	857	
	Watertown	2,362	
	Waterloo	577	
			11,464
LAFAYETTE	Benton	1,919	
	Fever River	1,417	
	White Oak Springs	523	
	Shullsburg	1,860	
	Elk Grove	437	
	Belmont	513	
	Prairie	602	
	Willow Springs	682	
	Gratiot	257	
	Wayne	211	
	Wiota	914	
			9,335
LA POINTE	La Pointe	346	
	Bad River	21	
			367
MANITOWOC	Manitowoc	759	
	Twin River	526	
			1,285
MARQUETTE	Apuckaway	399	
	Lake Moriah	333	
	Tichora	624	
	Green Lake	246	
	Fox River	314	
	Dartford	345	
			2,261
MILWAUKEE	City of Milwaukee		
	1st ward	4,401	
	2nd ward	3,872	
	3rd ward	2,973	
	4th ward	1,452	

CENSUS *(Continued)*

Names of Counties	Towns and Precincts	Population of towns	Total
MILWAUKEE	5th ward	1,369	
	Milwaukee (town)	836	
	Greenfield	1,766	
	Franklin	1,041	
	Lake	1,182	
	Oak Creek	1,115	
	Granville	1,412	
	Wauwatosa	1,372	
			22,791
PORTAGE	Grand Rapids	431	
	Plover	185	
	Stevens Point	201	
	Dubays Point	156	
	Little Bull	94	
	Big Bull	313	
	Eau Claire	124	
			1,504
RACINE	Racine	3,647	
	Yorkville	936	
	Mount Pleasant	906	
	Raymond	816	
	Caledonia	904	
	Wheatland	894	
	Salem	832	
	Bristol	912	
	Paris	904	
	Southport	2,870	
	Pike	619	
	Pleasant Prairie	862	
	Brighton	889	
	Norway	636	
	Rochester	1,536	
	Burlington	1,373	
			19,539
ROCK	Janesville	2,587	
	Beloit	1,851	
	Johnstown	921	
	Lima	819	
	Milton	890	
	Center	907	
	Spring Valley	640	
	Magnolia	418	
	Rock	430	
	Union	815	
	Fulton	601	
	Porter	637	
	Newark	779	
	Avon	414	
	Turtle	770	
	Clinton	776	
	Bradford	464	
			14,729

CENSUS *(Continued)*

Names of Counties	Towns and Precincts	Population of towns	Total
SAUK	Sauk Prairie	1,223	
	Baraboo	955	
			2,178
SHEBOYGAN	Precinct No. 1	1,786	
	Precinct No. 2	1,191	
	Precinct No. 3	425	
	Precinct No. 4	964	
	Precinct No. 5	580	
	Precinct No. 6	142	
	Precinct No. 7	492	
			5,580
ST. CROIX	District No. 1, south of Stillwater	1,240	
	District No. 2, north of Stillwater	434	
			1,674
WALWORTH	Bloomfield	728	
	Darien	853	
	Delavan	1,012	
	East Troy	1,027	
	Elkhorn	339	
	Geneva	1,238	
	Hudson	1,036	
	La Fayette	940	
	La Grange	867	
	Linn	574	
	Richmond	617	
	Sharon	956	
	Spring Prairie	1,332	
	Sugar Creek	656	
	Troy	855	
	Walworth	901	
	Whitewater	1,108	
			15,039
WASHINGTON	Erin	664	
	Richfield	1,152	
	Germantown	1,722	
	Mequon	1,777	
	Hartford	900	
	Polk	1,091	
	Jackson	798	
	Grafton	1,873	
	West Bend	960	
	Clarence	410	
	Fredonia	538	
	Port Washington	2,314	
	Addison	1,010	
	North Bend	332	
			15,547
WAUKESHA	Waukesha	1,905	
	Warren	905	
	Vernon	701	
	New Berlin	1,146	

CENSUS *(Continued)*

Names of Counties	Towns and Precincts	Population of towns	Total
WAUKESHA	Brookfield	1,232	
	Summit	933	
	Oconomowoc	911	
	Mukwonago	894	
	Eagle	732	
	Ottawa	723	
	Delafield	806	
	Genesee	1,004	
	Menomonee	1,062	
	Lisbon	901	
	Pewaukee	1,016	
	Muskego	991	
			15,866
WINNEBAGO	Brighton	546	
	Rushford	727	
	Butte des Morts	312	
	Winnebago	678	
	Neenah	524	
			2,787
Total population in the territory			210,546

POPULATION OF THE SEVERAL COUNTIES, JUNE 1, 1846

Dane	8,289
Sauk	1,003
Racine	17,983
Walworth	13,439
Rock	12,405
Columbia	1,966
Grant	12,034
Waukesha	13,793
Dodge	7,787
Sheboygan	1,637
Manitowoc	629
Green	4,758
Jefferson	8,680
Crawford	1,444
Iowa, Richland, and Lafayette	14,906
Washington	7,473
Calumet	836
Marquette	989
Fond du Lac	3,544
Milwaukee	15,925
Portage	931

POPULATION OF THE SEVERAL COUNTIES FROM 1840 TO 1847, INCLUSIVE

	1840	1842	1846	1847
Dane	314	776	8,289	10,935
Sauk	102	393	1,003	2,178
Racine	3,475	6,318	17,983	19,539
Walworth	2,611	4,618	13,439	15,039
Rock	1,701	2,867	12,405	14,729
Grant	3,926	5,937	12,034	11,720
Dodge	67	149	7,787	14,906
Sheboygan	133	221	1,637	5,580
Manitowoc	235	263	629	1,285
Green	933	1,594	4,758	6,487
Jefferson	914	1,638	8,680	11,464
Crawford	1,502	1,449	1,444	1,409
Iowa and Richland	3,978	5,029	14,906	7,963
Washington	343	965	7,473	15,447
Calumet	275	407	836	1,060
Marquette	18	59	989	2,261
Fond du Lac	139	295	3,544	7,459
Milwaukee	5,605	9,565	15,925	22,791
Portage	1,623	646	931	1,504
Brown	2,107	2,146	2,662	2,914
Winnebago	135	143	732	2,747
St. Croix	No return	No return	1,419	1,674
Chippewa	No return	No return	No return	367
La Pointe	No return	No return	No return	No return
Columbia	With Portage		1,966	3,791
Waukesha	With Milwaukee		13,793	15,866
Lafayette	With Iowa			9,335
	30,945	44,478	155,277	210,546*

The said report was adopted.

Resolution No. 1, introduced by Mr. Root on Saturday, was taken up, when Mr. Root asked leave to withdraw the same. Leave was granted.

Mr. Lewis introduced the following resolution, which was read, to wit: "*Resolved,* That the committee on education and school funds be instructed to inquire into the expediency of providing in the constitution that section 16 in each township in this territory be appropriated to the support of schools within the township in which it is situated."

No. 6, article on suffrage, was then taken up. And pending the question on the amendment of Mr. Dunn of Friday last,

Mr. Richardson addressed the convention as follows: MR. PRESIDENT—I arise not with the view of making a long speech; that

* The publishers have inserted a communication made to the Council of the Legislative Assembly on the ninth of February, 1848, by the Secretary of the territory, instead of the report of the committee to the convention, which includes returns from all the counties (except Chippewa) stated by the committee as having then made no returns. Otherwise, the report of the committee and the communication of the secretary are the same. They have also included in the general statement of the population in the years 1840, 1842, 1846, and 1847 the additional returns for 1847 as contained in the communication of the Secretary.

is out of my line of business. My constituents do not expect it of me. But they expect me, as far as I have the ability so to do, to reflect their feelings and wishes as far as I have a knowledge of the same, by voting for the adoption of measures in accordance therewith, and perhaps they require this further duty of me, that I should state in a plain and candid manner the reasons for thus voting. This, Mr. President, I believe to be my duty, and hope I may never be found wanting the disposition to discharge my duty to myself, my country at large, and my immediate constituency. Therefore, Mr. President, I would most respectfully ask indulgence of this honorable body for a few minutes while I endeavor in my homespun and farmer-like style to state the reason for the course I shall pursue in regard to the important measure now under consideration—one, Mr. President, which in my humble opinion is second to none in point of importance which has or will come up for the consideration or deliberation of this convention.

I will further state that in my remarks I will travel over as little of the ground which has been occupied by gentlemen who have preceded me as the nature of the case will admit of. I shall necessarily occasionally have to tread upon ground that has already been occupied, but when I do so it will be for the purpose of advancing some idea which others did not while occupying said ground. But should I digress, which I shall be liable to do, I hope the convention will pardon me.

Mr. President, I feel a heavy responsibility resting upon me in this matter, but not one that I will shrink from. I must say, as did the honorable mover of this amendment, and reiterated by my honorable colleagues from Grant, that I am well aware of the strong current I have to stem by thus taking a stand, as I conceive, upon the side of truth and justice. In the first place, Mr. President, I will say that I fully concur in sentiment upon the subject with the honorable mover and other honorable gentlemen who have argued in favor of the proposition and in the opinion that the principle contained in the first part of the amendment is a sound, correct principle and just in its application, for the plain reason that it has its foundation in inimitable justice, and that we are making a concession on our part by advocating the adoption of the principle contained in the latter part of said proposition. But, as was very justly remarked by the honorable mover, some concession on the part, perhaps, of each and every member of all deliberative bodies

is necessary to the accomplishment of the objects for which they were called together. In the very nature of things it is impossible that it should be otherwise; and for one, Mr. President, I contend that the concession we make in this matter is one of great magnitude, and one, Mr. President, which will not in my opinion benefit those who demand it at our hands. The inquiry may very naturally arise here: Who is it that makes this demand? Ah! Mr. President, this is a hard question for me to answer, but possibly in some remark which I may make in treating this subject gentlemen may find an answer to the inquiry. Again, it may be asked why we make this concession. I will answer, for the plain reason that we do not wish to do anything that will bear even the semblence of injustice to those of foreign birth who are among us and have assisted in the organization of our state government. I want to be distinctly understood that I do not—neither do I believe that my constituents do—recognize the principle contained in the latter part of this amendment as being sound and just; but, as before stated, we yield this much so as to accomplish the object of our coming together. I cheerfully bear witness to the correctness of the statement made by my honorable colleagues relative to their being but one feeling, as a general thing, upon this subject among all classes, irrespective of party, in my county; and as has been remarked by my colleague, Mr. Cole, we have residents from almost all climes and countries; but they are a law-loving and law-abiding people; and I am proud in having the honor of being one of their representatives.

I do not wish it to be understood, Mr. President, when I say that I concur in sentiment with those who have preceded me in support to this amendment, that I fully subscribe to all the conclusions they may have come to in reasoning upon this subject, for I must with all due deference to the opinion of my honorable colleague, Mr. Cole, most respectfully ask leave to differ with him in opinion relative to the power or ability of this convention to make any law by which individuals can be made citizens of the United States. I hold that the power to make citizens of any state vests nowhere but in the Congress of the United States; and for proof that this statement is true I appeal to the Constitution of the United States and the laws upon the subject of naturalization emanating from Congress by virtue of said Constitution. The Constitution of the United States vests the power in Congress to enact laws upon the subject of natur-

alization which shall be uniform throughout the United States. Section 1 of the alien laws reads as follows: "Any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise."

Some argue that we should extend the elective franchise to aliens upon a declaration of intention to become citizens, so as to lay them under obligation to bear the burdens of government. Now, Mr. President, I deny that such declaration makes them liable for the imposition of any burdens which they were not liable to without such declaration, for the plain reason that their relation to the government is not changed, as far as the liability for the imposition of burdens is concerned. They were residents before such declaration and they are nothing but residents after. They were not citizens before such declaration; neither are they after by virtue of such declaration, which I think I have proved by authority that I think no gentleman upon this floor will attempt to gainsay or question. I know that the right to fix the qualifications of their voters is reserved to the states respectively. But, Mr. President, is it sound policy to make voters and office holders among us, of individuals who are citizens neither of this state nor of the United States? It is not good policy, for the plain reason that nothing short of citizenship can, in the very nature of things, implant in the bosom of the individual that patriotic devotion to the institutions under which he lives, so essential in the subjects of all republican governments. And why? Because he has, when he becomes a citizen, abjured all other government and swears allegiance to this government; and when he sees the flag of freedom unfurled in the breeze his heart leaps with joy, knowing that he can claim its protection wherever it may find him. It was gravely stated on Saturday by the honorable member from Dane (Mr. Fox) that it is necessary to extend the elective franchise to aliens immediately on their arrival among us to induce them to consummate their citizenship. I must confess, Mr. President, that I then, for the first time in the few years I have lived, learned that pay in advance was a sure means of securing faithful services. The old maxim—I should have said new-fangled maxim—would no doubt be swallowed with more avidity. But the old maxim is, "There are two bad paymasters, the one who pays in advance, and the other, one who never pays." Again—we want their votes. We want their votes. Now, Mr.

President, I will not say that I have heard such language held by honorable members of this convention. But this is within the range of possibilities, and it may be that I have. Who are "we"? Now, Mr. President, as I have accused no gentleman upon this floor of being a component part of this Mr. "We," I will fearlessly give my opinion who this Mr. "We" is. It is political demagogues. Again, says one, we need their votes—and why? For the plain reason that the duties of office are well performed just in proportion to the number of votes which the incumbent received to place him there If this is the case, I will give it up and agree we need their votes. Again, it is injustice to tax any who have no representation. In the first place I deny that in all cases taxation and representation should go together. I presume that every gentleman upon this floor has heard of Lord Charles Murray, who owns some twenty thousand acres of land in the county of Grant. Have we not a right to tax those lands? Certainly we have. They are protected by our laws. A person is just as much a trespasser by cutting timber upon those lands as he would be in cutting timber upon lands adjoining, upon which the owner thereof lives. Is Lord Murray to have a voice in our legislative halls in consequence of our taxing his lands? I presume no one will say he is. In the next place I deny that aliens who are among us are not represented unless they are voters, for upon the broad principle of representation the basis is not the number of electors but the number of inhabitants; and it is upon this principle that females and minors are represented. Why extend the right of suffrage to all, while some have nothing to tax, if taxation and representation are inseparable? And as was correctly stated, these lovers of equality do not carry out their theory in practice. I hear no gentleman upon this floor making a move to exempt from taxation the property of females and minors. Gentlemen who are opposed to this amendment talk loud about equality among all classes of community. Why then draw a line of demarcation by law between the voters and the individual to be voted for. I contend that the law should make no such distinction—but personal merit and demerit should be the only cause of such distinction. If gentlemen wish to see themselves on this subject they can take a peep into a mirror, which they will find on the journal of the proceedings of the twenty-fourth of December. And I must say that I believe it reflects very correctly. The very fact of this amendment emanating from the source it did should commend it to the candid,

careful, and dispassionate consideration of every member upon this floor; and I do hope that we may divest ourselves of prejudice and self and give this matter due consideration and vote accordingly.

Mr. Beall arose simply for the purpose of setting himself and those who acted with him right before the convention. He was one of those who in the committee voted for the extension of the rights of foreigners. He had done so from no such motive as might have been indirectly imputed by the gentleman who had last spoken, but from considerations of right and justice. This question of suffrage was not a new one, nor was the question now under discussion a new one. It was older than the Constitution of the United States. The doctrine of the propriety of an enlargement of the elective franchise was discussed years before the adoption of that constitution. (Mr. Beall here read an extract from the Ordinance of 1787.) The process of becoming a citizen of the old states was as easy as it is now to take the initiatory steps of becoming one; at the time of the adoption of the Ordinance of 1787 the principle for which we contend was recognized. He would tell the gentleman from Lafayette (Mr. Dunn), who calls us progressives and disorganizers, that we contend with him on his own ground. The gentleman from Grant (Mr. Cole) had rung many changes on what he deemed to be hypocrisy and charged that, while we desired to give foreigners the privilege of voting, we would not vote for them. (Here Mr. Beall read a further extract from the ordinance.) While he rested on the provisions given and handed down by the authors of that ordinance he felt that he and his friends were at least relieved from the charge of hypocrisy; and he would say to the gentleman from Grant that he hurled back upon him the foul imputation.

While by reference to the ordinance he had established the principle on which he acted, he would say a few words to the gentleman from Lafayette in regard to precedents. Not only in the Ordinance of 1787 were the wisdom and expediency of these principles exhibited, but they were carried out in the constitution of the state of Ohio. When that constitution was framed its makers were left to the lights afforded by the ordinance. The result was the adoption of a provision requiring only one year's residence to entitle foreigners to the right of suffrage. We desire six months only. The constitution of the state of Illinois was adopted under the same lights—that requires but six months. Thus we have the authority

of two states which framed their constitutions under the same lights. In the new constitution of Illinois, it was true, that principle had been changed, but it was to be remarked that in relation to the adoption of that constitution the people of Illinois had great doubts. These doubts referred to two principles—one was this matter of suffrage; the other, the article on banks.

The course taken by himself (Mr. Beall) and his friends was not, therefore, so unheard-of as the gentleman from Lafayette would lead the convention to suppose. Nor was it so inexpedient or impolitic. But expediency was not his word. He founded his cause on principle.

As regarded the charge of progression, he was and always would be proud of it while progression had among its originators such names as William Leggett. He recollected when the writings of that great man were abused and vilified by the standstill party, who held to the doctrine that all that savored of hoary and venerable antiquity should not be touched. The memoir of that man was now enshrined in our hearts. He was the very polestar of the principles which he (Mr. Beall) sustained. He was proud of being a progressive. In being so, he felt that he had some little of the genius which characterizes the American people. The idea that the Constitution of the United States should not be improved had no place in his mind. Of late years we hear continually of conventions held for the amendment of constitutions. What was this but progression? Last year three conventions were held for that purpose, one of which had recently closed its session in the state of New York. At that convention the first great blow was struck at the standstills by making the office of judge elective by the people; another blow was aimed, and he regretted to have seen it defeated, by an effort to change the mode of charging juries.

In the earlier days of the settlement of our country the foreigners were mostly Irish. We had then very few emigrants from the continent of Europe. This country—in fact the world at large—was indebted to Irishmen. The same remark was applicable to all the foreign population. Look to the plains of Mexico—could we see anything there derogatory to the army in the conduct of our adopted citizens? The plains of Monterey and Churubusco afford no foundation for so unjust an imputation.

[Mr. Castleman: MR. PRESIDENT—Before this vote is taken I must beg the indulgence of the convention for a few minutes that I

may succinctly state some of the reasons for the vote which I am about to give. It is a duty which I now feel doubly bound to perform, from the fact of the deductions which have been drawn from the circumstance that no one from the east had been found to say one word in defense of this amendment. The remarks which were incidentally made by me a few days ago on this subject were made by which they were called out. Since then, I have listended attentively to the debate, determined to be governed in my future course by the reasons and arguments which might be presented. Every argument which I have heard from either side has served to convince me that the opposition to it has originated in that mania, that wild and radical disposition to reform, which in this age of "progress" would strip the sun of his power to shine that it might "light the world with gas."

The gentleman from Fond du Lac gravely tells us that we have given no precedent for this policy; but he offers as precedent against it the constitutions of Ohio and Illinois. He has read to you that every free white inhabitant of the state of Ohio shall be an elector, and a similar provision from the constitution of Illinois. These are his precedents. Allow me to say of them, sir, that Ohio by her laws has decided that the word "inhabitant," wherever used in her constitution, means "citizen"; and public opinion ever since has sustained the decision; and Illinois has after an experience of twenty-nine years, by her Democratic convention, declared the experiment a failure, torn it from her new constitution, and placed in its stead the identical principles of this amendment. And these are his precedents in opposition to this amendment. But, as if dissatisfied with his own precedents, he flies off to the opinions of William Leggett. Let me tell the gentleman that I yield to no man in the measure of my admiration for the high powers of intellect, the logical reasoning, and the exalted genius of William Leggett But, sir, whilst I admire his genius and venerate his memory, I remember that Leggett was a man, and subject to the errors of mankind, and that even his opinions cannot outweigh the precedents which I offer for the gentleman's consideration. I offer first the Constitution of the United States as a precedent, by which we have been governed and under which we have lived and flourished and grown beyond our most sanguine expectations for more than half a century. I present next the constitutions of all the states of this Union, which have followed the example of that embodiment of

wise and prudent measures, and then return to him as the strongest precedent of all, his own precedent of Ohio and Illinois, which have so emphatically declared in favor of the principles of this amendment.

I shall vote for the amendment, sir, because I believe it to be right in principle and because I believe my constituents are willing to do right instead of treating it as an abstract principle not to be carried out. I live in the midst of a foreign population, composed of immigrants from almost every state in Europe; and, sir, as a body they are honest, intelligent, well-informed, and grateful for the religious and civil liberties they enjoy here. They are industrious in their habits, rational in their political wishes, and reasonable in their expectations; and when they call on me to give an account of the deeds done in this matter, I shall say to them: "You, though not yet citizens of the United States, were here with us, and in common with us have borne the difficulties incident to the settlement of this new country—you are a part of the population by which we are entitled to admission into the Union of the states—you have thus far participated in making our laws and must therefore feel an interest in our institutions—that I therefore no longer look on you as foreigners, but extend to you the hand of fellowship and meet you in future as American citizens, and recognize you as entitled to all the privileges of the most favored citizen." And when I shall have shown them that I labored to carry out this wish, I have no fear, sir, but that they will accord to me the plaudit of "Well done." Should, then, some fault-finding demagogue (I do not fear the adopted citizen's asking it) inquire why I did not vote to do something more for their friends in the old country who may sometime wish to come among us, I will answer frankly, sir, that I voted for the measure which guaranteed to them on our soil the enjoyment of religious liberty which they did not possess at home; for the measure which extended to them the protection of all our laws, whilst it exempted them from the poll tax, exempted them from military duty and from service on juries—all of which are required of the American citizen—and for the measure which extended to them the right of suffrage as soon as they could become American citizens. And they will say I did right. Should fault be found that more was not done, I will answer that I was not sent here to legislate for people beyond the sea, nor to make a constitution for England, Ireland, or Wales, but for the state and the people

of Wisconsin, and whether to this they may answer right or wrong, I shall have the approval of my own conscience. It is not my intention to argue this question on constitutional grounds. I leave that where it appropriately belongs—to those who have made it their study; but it should not be forgotten that in voting against this amendment and for the report of the committee we vote the right of suffrage to foreigners under whatever circumstances they may come here—whether in war or peace, whether to "reform" our laws through the ballot box or by the musket. Suppose Mexico could at this time boast so liberal a provision in her constitution as the one asked for in this report—what would be her condition? Hundreds of our volunteers have, under the conviction that Mexico must succumb to our arms, made up their minds to remain in that country. To become voters all they have to do is to sign the declaration of intention to become citizens, their "intention" to abjure their allegiance to foreign powers, then with their musket march over the multilated body of the very officer who administered the oath and over the violated laws of the country, to expel her Congress from her capital, and substitute for the existing laws under which they "intend" to become citizens [sic].

Again—suppose this to be the existing law of the United States. It would arrest all naturalization; it would be a fee to the foreigner to remain a foreigner. He would be entitled to all the privileges of the American citizen and to many immunities which the citizen does not possess. The foreigner has ever been exempt from poll tax—we cannot require of him military service nor the tax which bears so heavily on the citizen, the service of a juror. But, sir, there is another immunity which overshadows all the rest, for it should be borne in mind that the foreigner, until his naturalization is completed, cannot be convicted of treason, and that every vote he casts is helping to make laws for citizens by which he (the foreigner) cannot be bound. Suppose ourselves in a state of war—the intended citizen may join the army of the invader, march to our capital, bayonet our Congress, mutilate the statutes of the country, and place in their stead the laws of other lands. And, sir, in this he may have induced a citizen to join with him—suppose in this case the invaders repelled and these two captured—what then becomes of the "no distinction" line contended for here? Whilst by the laws of war and the laws of the country the intended citizen would be an honorable prisoner of war, perhaps going at large on

his parole of honor, the actual citizen under the same law must be shot as a deserter or hung for treason from the tree of his own soil. Is there no distinction here? In whose favor is it?

Let me not be misunderstood. I would not lengthen the time required for naturalization—on the contrary I would shorten it; I would bring it down to three, to two, or even one year, so that foreigners may become citizens and electors. But let it begin in the right place—in Congress. Let our naturalization laws be uniform. I have no distrust for the foreigner more than I have for the American citizen; but when laws are found necessary to protect the common weal against the treason of the American citizen, shall we admit the foreigner to all his privileges before he is subject to liability for treason against the same laws? Sir, it is a distinction unreasonable and unprecedented.

The stereotyped phrase that taxation and representation should go together have been dragged into this debate by my colleague (Mr. Gifford) and by the gentleman from Dane, as founded on democratic principles. Sir, if this is the doctrine of democracy, I thank God that I am no democrat—that I have independence to abjure even the name, if an abomination like this must go with it. What does it amount to? That a man must be represented in proportion to the tax he pays. It means this or it means nothing. It means more, sir—that unless he has property to be taxed he can neither be elector nor elected to any office; thus he can have no voice in our counsels—his life, his liberty, his intelligence all pass for naught till he has property to be taxed; then he is a man and entitled to the political rights of man, but not till then. The democracy which I follow teaches that the right to govern is derived from the consent of those who are governed, whether they have property or not. But the gentleman would overshadow that by the "progressive" doctrine that man derives his right to govern from the number of mules and jackasses he may be able to bring to the market. But, sir, this peculiar democracy has given us a claim upon the gentlemen on another subject to be agitated here—the right of the colored man to vote. I find by the journal that the gentlemen both voted against the provision. There are but few negroes in our territory who do not pay a tax. What became of their principle of taxation and representation when they voted on that subject? And why will they not vote to strike out of the report the word "male," that taxed females may be represented? And we have another claim on the

consistency of both these gentlemen. They have attempted to excite our sympathies by appeals in favor of the poor foreigner who was oppressed in his own land and flees here for the blessings of liberty. I would ask those gentlemen, if they base the claim of the foreigner on his oppression and his love for liberty, where were their sympathies when they voted against the right of the colored man whose very existence would have been crushed by the iron heel of oppression had not the interest of the oppressor led to the preservation of his existence? Who, if he loves not liberty as well as his white neighbor, does not because that same iron heel had persevered in trampling on his rights and liberties till it has well-nigh obliterated the hope of recovering them, together with the knowledge of what they are. Sir, I am not drawing comparisons between the colored man and the foreigner. I am only applying the principles of the gentlemen and measuring them by their votes. Are they honest in the argument? When the question of the colored suffrage is again brought up we will see which they will change—their principles or their vote. I repeat, sir, that I have confidence enough in the honesty and good sense of my constituents to believe that they will sustain me in the ground which I have taken. If, however, I am mistaken—if I should find but one amongst them who believes with me—still I shall feel proud of the stand I have taken, to have it a matter of record for myself and and my children to reflect on, that my convictions of right could not be made subservient to my love of popularity.—*Tri-Weekly Express,* Jan. 22, 1848.]

The gentleman from Dane (Mr. Fox), who had previously addressed the convention, had based his arguments on the principle that taxation and representation should be separated. Why was not this principle also applied to the colored population? They were taxed; why should they not be allowed on that principle to vote? Was the principle not applied to them because it was thought that the colored population of Wisconsin was not sufficient in numbers to be of any importance at the polls? Did it mean that? If not, what did it mean?

These, said Mr. Castleman, were the principal reasons for the vote he would give. He had but one more matter to refer to, which was the threats that had been made on the floor and in audible conversation by members in the hall, that if the principle proposed by the amendment was incorporated in the constitution, the for-

eigners would vote the constitution down—because their friends abroad were not provided for in the constitution, that they would come up as a class, as foreigners, and vote against that instrument. If the convention were to be intimidated by such threats, they had better adjourn that day and go home. He came here to do what he conscientiously thought right, and he wished it to be placed on record that he had stood firmly on the principle contained in the amendment, as a matter of right, in defiance of all threats and all opposition.

Mr. Sanders rose simply to give his reasons why he would vote against the amendment. He would have been content to give a silent vote, but for the imputation of hypocrisy thrown out by the gentleman from Grant (Mr. Cole). He had not come here to manufacture claptraps for popularity, nor did he believe that the gentleman from Grant came here for any such purpose. He was opposed to the amendment of the gentleman from Grant (Mr. Dunn) on the grounds of justice. Expediency was a word for tyrants; and he would not vote for any measure to form a part of the law of the land on the grounds of mere expediency or policy.

The principle he advocated was one of the oldest known to our statesmen. It was no matter of progression. It had been sanctioned at an early day by men who had but one object in view—to secure to their fellow men the most inestimable rights. At the close of the Revolution there was no question of foreigners. They had all fought side by side, and the fathers of the confederacy had desired that rights and privileges should be equally extended to them in the Northwest Territory and made but one requirement—that they should be inhabitants. In 1812 they took off the property qualification and extended to every inhabitant the right to vote. The member from Waukesha (Mr. Castleman) had said that he came here to assist in forming a constitution for those now in the territory. He (Mr. Sanders) came here to aid in framing a constitution, the provisions of which should be applicable not only to them, but to those who should come hereafter. He could see no reason for a limitation in this respect. Men seemed to forget that foreigners coming here were not enemies. They came here as friends. The foreigners furnished us with a Lafayette and a Shields, but never an Arnold. They gave us patriots to fight our battles, but never a traitor. Of all men in the world those who

had torn themselves from their fatherland were the last to wound the hand that shielded and protected them.

Mr. Fox said that some conversation had apparently been addressed to him by the gentleman from Waukesha (Mr. Castleman), who had talked about his vote on the question of colored suffrage. He, as a foreigner, felt highly complimented by the comparison that had been instituted between the foreigners and the colored poulation. It stirred every drop of Milesian blood within his veins.

Mr. Castleman explained.

Mr. Fox said that he could not but feel the comparison as rather odious. He came here as an adopted citizen of the United States and as such should advocate the rights of those in the same position with himself. If any such principle as was now proposed should be incorporated in the constitution, that constitution would meet with its fate as regarded the foreigners. As regards what had been said by the gentleman from Waukesha about the foreigners taking up arms, he, for his part, would be inclined to call it balderdash. He hoped gentlemen would excuse his language, but it was the "cider" that was wanted, not the "talk." How could a native-born citizen look back to the fields of the Revolution and ask that a principle shall be adopted that will exclude the foreigner who may come here tomorrow from the right of suffrage for five years, while he that is here today shall be permitted that right? Can we expect that foreigners, knowing such a principle to be engrafted in the constitution, will vote for its adoption? Certainly not. As he himself desired to see the constitution adopted, he trusted that a compromise would be entertained.

Mr. Lakin addressed the convention as follows: MR. PRESIDENT—I cannot permit the vote to be taken upon the proposition before the convention without expressing my sentiments upon it, although in doing so I cannot say that I have a lingering hope of being able to convince a single member or of making a single vote. No man can be ignorant of the difficulty of convincing others against their will, against what they may deem to be their interest. That there are objections to the original article on account of its unconstitutionality there can be but little doubt. But I do not propose to argue the constitutional question here; others of more ability who have preceded me have insisted upon the amendment upon different grounds, and I shall probably follow somewhat in the track

in the offhand remarks which I may make. Gentlemen say that they have precedent for permitting the alien to vote. Admit it. They are not in the dilemma in which the Virginia justice found himself when he was applied to for a warrant to search for a turkey. The sage of the law examined his book with the utmost diligence and was unable to find turkey or anything that looked like such a fowl. But after mature deliberation and much straining of the brain he turned to the applicant and told him what he could and would do. Said he, "I will grant you a warrant to hunt for your cow, and while you are hunting for your cow you may possibly find your turkey." There is a precedent for almost everything, except for hunting for a turkey, and although there is none for hunting for such a fowl, there are precedent for eating them, as can be proved to the satisfaction of anyone who will but step into the dining room of our landlord. You can find a precedent for anything from butchering a Cæsar in the senate chamber to skinning a mouse in a garret. Gentlemen who advocate unconditional suffrage claim that the Ordinance of 1787 recognizes their doctrine. Let them examine Story's *Commentaries*, and I think that they will there find it laid down by that most able jurist that Congress in passing that ordinance assumed a power not delegated to them by the Articles of Confederation. But suppose the principle contended for is constitutional—is it fair? Suppose that according to a righteous construction there are no legal or constitutional objections against it—should we be acting in good faith toward the other states of this great republic if we throw open our doors to unconditional suffrage? It is not fair always to avail ourselves of our legal rights and remedies. If you sue your neighbor for merely setting his foot upon your soil or for any other nominal injury and recover a bill of costs against him, you do not act in good faith, although you may be legally right. Any state in this Union might, perhaps, in its sovereignty admit of placing in its gubernatorial chair any foreign prince or potentate. A state might conclude to elect Louis Philippe to the Congress of the United States. For purposes best known to His Majesty's self, he might accept of the office and go to Washington with his immense wealth and glittering crowns. From such a source, what dangers would threaten our republic! From these premises it is clear that Wisconsin, although she may keep herself upon constitutional ground, may still act in bad faith towards her

sister states. She may assume the attitude and clothe herself in the garb of a Shylock and insist upon her "bond."

Our opponents claim to be more liberal toward the foreigners than we are. Any person who is willing to open his eyes—and I ask every foreigner to do so—cannot fail to see the fallacy of the claim. In fact, they are much more illiberal than we are. A day or two ago an amendment was offered to the article on the executive department, so to modify it as to admit of unnaturalized aliens being promoted to the gubernatorial chair. And I ask who voted down the proposition. The very members who pretended to be solicitous and tenacious for the rights of foreign suffrage. These political aspirants virtually say to the alien, "Bow down here and do homage to me; put your shoulders to the wheel and roll me into power." But when they are asked to reciprocate the favor, that alters the case materially.

Mr. President, I go all lengths for liberality and for liberal principles. I am opposed to all insidious comparisons and distinctions. I care not what land gave you birth. It matters not to me whether a man hails from England, Ireland, Germany, China, or New Holland; if he is a man of correct habits and principles, I can take him cordially by the hand and am ready to fight with him for the cause of liberty.

We hear members of this convention threatening to vote down the constitution unless we make provision for the foreign vote. They say that their constituents are principally foreigners and that they are all powerful. It may be so. But there must be something wrong about it. They must have been at the wrong school. They have been seduced by the flatteries of office seekers—by the promises of political ambition. They have been taught the lesson of unwarrantable ingratitude. A large proportion of those whom I have the honor, in part, to represent are foreigners—English, Irish, Germans, and others from various parts of the world. They are generally intelligent, industrious, and respectable men, who have appreciated the free institutions of our country and who have been willing to live under those institutions, enjoying their protection and all the sweets of liberty, until they have prepared themselves to exercise the right of suffrage, which, as an individual right, is trifling when compared with the other manifest blessings which are extended to them from the time that they first set their feet upon American soil. They are men who have not been taught the

lesson of base ingratitude by artful demagogues who are ever on the alert for some political hobby. For one, I am willing to present the unvarnished story of truth to any intelligent, unbaised foreign population, with the firmest confidence that they will agree with me in the position for which I contend.

Do not we require Americans to live here twenty-one years before they are permitted to exercise the transcendent right of voting? And are not many of those Americans mature in intellect and mind long before they arrive at that age? Are they not qualified to vote so far as knowledge is concerned before they arrive at their majority? Yet gentlemen can see no oppression in this. This is all right, but when we require those who have lived and been raised under despotic and tyrannical government— those who have been trodden under foot—those whose eyes have been dazzled by the glitter of crowns—those who have been compelled to fall down and do homage to thrones— who have been compelled to wrest from their own mouths the food necessary to sustain life and to throw it into the treasury to support a moneyed, a remorseless aristocracy— I say, when we ask these men to remain in the land of liberty a short time until they arouse from the intoxication which all the blessings of freedom showered at once upon a man has a tendency to produce, demagogues raise the cry of "Oppression!"

How false is the alarm! Those who have gone before us have erected the temple of liberty—they have furnished it with all the necessaries, with all the luxuries, of life. They have invited the children of every nation, every clime, and every tongue to come and partake of their bounties during their natural lives, and then to leave their seats rich legacies to their posterity; and the only condition required is that the guests for a short time merely look to the matters of their own private convenience and comfort and leave the drudgery and management of the temple to those who are accustomed to that kind of work. We hear members of foreign birth in this convention declaring that their ancestors fought for American liberty. That may be true, and if so, it is a special reason why their worthy and patriotic sons should enjoy the special privileges last enumerated. But I am inclined to think that gentlemen are too apt to predicate their claims to favor upon what their fathers did or were supposed to have done. It might be a difficult problem in mathematics, and might require the use of more letters representing unknown quantities than we could well imagine, to arrive at a

definite and certain result. It is amusing—this thing of boasted ancestry! Ask the Romans who their fathers were, and they reply—the gods. But they do not tell you that their mother, or rather nurse, was a highly respectable female wolf.

But just for information I would inquire of gentlemen, whose ancestors fought against American liberty. It is very difficult to obliterate from some minds the gorgeous displays of royalty. The Right Honorable Charles A. Murray is a case in point. He emigrated to the United States years ago, and traveled extensively, and became so much enamored and inspired as to write a book of fiction, a soul-stirring novel. Having lived here several years and having entered large tracts of land, he returned to England, and the Queen smiled upon him and conferred upon him some title of nobility, so that now, by divine right, and by the will of Her Majesty, the said Mr. Murray is Lord High Chambermaid of the Royal Bed-chamber or something of that kind.

But the supporters of the alien provision say that they do require conditions to be performed prior to voting. They say, "We require them to file their declaration." They place themselves in the attitude of the fair, coquettish damsel who says to her suitor, "Declare your intentions—pop the question—and you shall be entitled to all the rights, privileges, immunities, and caresses of wedded life." And I ask those gentlemen if like unto that fair damsel self-respect will not forever take its departure from their bosoms. Will not clouds, darkness, and despair hover around their political horizon and finally, like an avalanche, descend in their fury upon their heads, forever extinguishing the celestial taper within, which might guide them on to political grandeur?

And I ask the foreigner if he will be deceived by the flatteries, the seductive smile, and professed liberality of misguided ambition.

Mr. Doran obtained the floor, when

on motion of Mr. Larrabee the convention took a recess until half past two o'clock.

HALF PAST TWO O'CLOCK P.M.

Pending the question on the adoption of the amendment of Mr. Dunn,

Mr. Doran said that at the time the house took the recess for dinner he felt somewhat inspired by the occasion, as well as prompted by duty, to make a few remarks—a very few remarks—

on the question before the house. And although he should be very brief, it was not because he considered the question unimportant in principle or as regarded the fate of the constitution they were engaged in forming; but because he was as they might perceive, and had been, laboring under severe indisposition since the convention met. The gentleman from Grant (Mr. Lakin) who last had the floor still insists that the section of the suffrage article under consideration is unconstitutional—at least indirectly, if not directly—and expressed his sorrow that the question had not been argued with more force on this ground. But the fact that that gentleman, though a distinguished lawyer, could point to no unconstitutional feature in a state's regulating the qualification of its electors was pretty good proof that no such feature was to be found in such an act. It was, however, he was free to admit, expected that some new light was to be thrown on this subject; and the herald who so formally announced the intended introduction of the amendment by the honorable gentleman from Lafayette distinctly stated that that honorable gentleman was about to show us that we were all wrong—that the clause in question was unconstitutional, but that he would introduce an amendment as well for the purpose of obviating that difficulty as to effect a compromise between all parties, and in order to give time for maturing so much good the gentleman moved the adjournment on Friday evening. The honorable gentleman from Lafayette, however, took the earliest convenient opportunity when proposing his amendment on Saturday to undeceive the gentleman and the house and, in defining what he called "his position," distinctly to state that he was not about to discuss the question on constitutional principles. From this, then, he was bound to infer—and the house should come to the same conclusion—that if there was anything unconstitutional in the proposition it could not have escaped detection by gentlemen so very keen and so astute in constitutional law and so anxious to deprive the foreigners who had settled in the territory of privileges conferred on them by the Ordinance of 1787. That ordinance ordained and declared by the authority of the United States in Congress assembled that certain articles referred to as "the following articles" should be considered as articles of compact between the original states and the people and states in said territory—of which Wisconsin forms a part—and forever remain unalterable unless by common consent. And the fifth article of those thus referred to provides that "whenever any of the said

states shall have sixty thousand free inhabitants therein, such state shall be admitted by its delegates into the Congress of the United States,"etc., etc. He wished the house to mark the wording of this article of compact and see who were thus to be admitted. Were they to be citizens? No, there was no mention of citizenship as a qualification for admission. The words were "free inhabitants." Such was the constitution of Congress; such was the only construction of which the language was susceptible.

But he had thought that this question had been definitely settled by the decision of the Senate of the United States on the admission of Michigan into the Union. It was then contended—and ably, too—that Michigan was not entitled to admission for the reason that the constitution adopted by that state gave the right of citizenship, or rather the qualification of electors, to all foreigners then within the borders of that state. So argued Mr. Clay and other prominent men of the Whig party, while Buchanan, the lamented Wright, and several other Senators of the Democratic party took the opposite ground; and the Senate decided by an overwhelming majority that the right was inherent in the states, severally, to fix the qualifications of the electors. The case of Illinois was another instance, and in the constitution of Ohio also the words were "free inhabitants," conforming exactly to the wording of the ordinance from which it derived its power. But, says the gentleman from Grant last up, this thing of precedent is nothing; precedents can be found for almost anything and everything. Certainly if the house were to adopt some of that gentleman's crude notions, some extraordinary precedents would be established—precedents for believing that our judges were like, as he likened them to anacondas, and should be chained by constitutional restrictions as if they were tigers.

So much, Mr. President, for the unconstitutionality of this question. But there is one fact which satisfied him that the gentlemen arguing in favor of this restrictive amendment knew and felt they were in error.

The fact alluded to is that, notwithstanding the gasconade with which the intention to offer this amendment was trumpeted forth, the honorable genleman in preparing it made a singular failure. The effort was labored and still realized the anticipations of none. And this could not be for a moment attributed to a want of ability generally, but to a hopelessness of his case, which brought its sup-

porter down to its own level. The gentleman from Grant (Mr. Rountree) who seconded the honorable mover made as signal a failure. Remarkable as that gentleman is generally for precision and clearness, he could attempt only two points and those scarcely touched the case. The gentleman remarked that justice to those foreigners now in the territory and who were citizens should induce the convention not to grant citizenship on any shorter probation than was required by the naturalization laws. He contended that this convention could not nor was it proposed to grant citizenship. The convention had the right to say who might or who should not exercise the qualification of electors. In other words, it might make foreigners denizens but they would still have to adopt the further necessary means to become citizens. Again, said that gentleman, we are about to make a radical change in the fundamental laws. This was a great mistake. The convention could make no change in that law if the gentleman meant the Constitution of the United States. If the gentleman alluded to any fundamental law of this territory, he would inform the gentleman that up to this time there was no such law, and consequently we could not effect a radical change in it. But for this gentleman and the few Whigs who advocated the adoption of this amendment which went to require full citizenship as a necessary qualification for an elector, he could make many allowances. Foreigners generally, it was but too true, took sides with what was known as the Democratic party. But they were taught to believe and made to feel on their arrival here that the Whig party proper was and ever had been inimical to their interests. Hence their course. Different, however, and very different, too, was the case with the honorable gentleman from Lafayette (Judge Dunn) who moved this amendment. A Democrat, raised to a distinguished position by such electors as he would now eschew—his party kept in the ascendant by such voters as he would now disfranchise—himself, as he has told us, the son of an Irishman, who doubtless participated in Illinois in the privilege that his son would now deny to foreigners similarly situated—this is the man who would now kick down the ladder by which he made so distinguished an ascent; and this is the honorable gentleman for whom in this matter he could find no excuse. Some gentlemen of the Democratic party began to think, seemingly, that the party was too strong in this territory and that they might make themselves "exclusives" with impunity. The experiment was such an one as doubt-

less might be tried, but it should not be forgotten that the consequences might be dangerous.

The gentleman from Waukesha (Mr. Castleman) seemed to exhibit some little feeling because foreigners did not take a livelier interest in securing the right of suffrage to the colored man. He thought this susceptible of a most satisfactory explanation. Foreigners in all parts of Europe—indeed, in all parts of the world—read of the free institutions of the United States and anxiously look forward to the day when they can participate in them. But they read also in a jealous press on the other side of the Atlantic or of some other ocean that the link of union which now so completely binds the several states may one day be severed by the conflicting interests of the North and South. However, they look upon this as a remote contingency; they unbind all the ties which unite them to a fond home and dearly beloved friends; they embark and travel thousands of miles over a trackless ocean and on arriving in this country they again hear lisped the probable danger of a dismemberment of the Union and its cause. They shudder at the idea and resolve on the moment never to do any act in the least degree calculated to bring about such a result. Thus it is, that notwithstanding all their sympathies are with the man in bondage still so devoted are they to the institutions of this country that they will not make a single move calculated to cause disunion. They say, "This question has been one of compromise and is best understood by you native-born citizens; adjust it between yourselves."

Having digressed a little, he said he should wish to say one or two words on the present condition of Illinois in relation to the question, and he should have done. Illinois in framing her constitution introduced a clause precisely similar to the one sought to be amended. Since then some twenty years have rolled by, and with an entire change of circumstances the convention recently held in that state to amend the constitution has thought proper to introduce a clause requiring citizenship as a necessary qualification for an elector. This fact, says another gentleman from Grant, should be conclusive as a guide to our course. It is "philosophy teaching by experience." Now he drew a very different conclusion from these premises and would take occasion here to say that it was probable in twenty years from this time he would vote for such a qualification as is now proposed by the Illinois convention. But in reality, however, we might as well take up the constitution lately

rejected by the people of this territory, and say that document was "philosophy teaching by experience." The people of Illinois have not yet passed upon that constitution, which is said to be the best of philosophy, thus teaching; and if they should reject it, where then would be the gentleman's philosophy? Circumstanced as are the people of this territory, with so much land still to be located, much already purchased by foreigners for friends about to come to the territory, it is rather too soon for us to begin to practice our exclusiveness. I contend that Illinois was right in her principles originally; the same state of things should urge us to adopt her system which worked so well, with this additional reason—that we have a much larger foreign population than Illinois had.

The honorable gentleman who moved this amendment, having partially abandoned all constitutional ground, said "propriety, expediency, prudence, caution, and a due respect to the laws of Congress" were the principles that prompted him. Here was inconsistency in the extreme. The gentleman's amendment went to the length of giving the elective franchise to all foreigners now in the territory or who would be in it at the time of the adoption of the constitution without requiring of them any declaration of intention to become citizens—a proposition which might with much more propriety be said to be disrespectful to the laws of Congress and repugnant to the Constitution of the United States than any principle to be found in the original clause.

Mr. Doran combated the other reasons of caution, etc., etc., and showed there was no danger to be apprehended from the vote of foreigners, who would always throw their influence with one or the other of the two great political parties that divided the country.

Mr. Gale said he had listened very patiently while a large number of the honorable gentlemen had addressed the convention on this subject, but to his surprise not one single gentleman of the political faith of the mover of the amendment (Mr. Dunn) had spoken in favor of its adoption. Indeed, the gentleman from Lafayette had remained like "the tall oak by lightnings riven," and none had been "so poor as to do him reverence." He hoped his friend from Lafayette had not been made the "stool pigeon to catch the quails." The gentleman from the western part of the territory claimed this amendment as a compromise—but he did not know what the east had to surrender. This very question of extending the right of suffrage to persons of foreign birth he regarded as a western ques-

tion. It was first proposed in the house of representatives on the tenth day of January, 1844 by the Hon. Alonzo Platt of Platteville, a Whig; and a bill containing this provision passed the Council a few days after by western votes; and if the gentlemen from the west were not satisfied with the principle they need not blame the east. As far as he understood the wishes of his constituents, he doubted not but that they would be satisfied with either course. All they asked was that the question should be settled, and they would govern themselves accordingly. He had, however, one very serious objection to the amendment, for while it proposed that all foreigners coming into the state after the adoption of the constitution should not have the privilege of voting until they became naturalized citizens, it conferred the right of suffrage upon anyone who might be in the state on the day of its adoption, whether they had declared their intentions to become citizens or not. This he thought both unequal and inexpedient.

Mr. Jackson: I have witnessed with regret the disposition of some members to throw odium upon the honorable mover of this amendment (Mr. Dunn) and I am sorry that any gentleman should be an object of personal attack. He (Mr. Dunn) had given his views on the subject in a clear, courteous, and respectful manner, and his arguments and those of other gentlemen on that side of the question were entitled to serious consideration.

It has been intimated by the gentleman from Milwaukee (Mr. Doran) that unless the Democratic party were liberal with the foreign population of the country, the Whigs by adopting a judicious course may make some political capital out of this subject. I wish it to be distinctly understood, sir, that in my course upon this question I am not to be operated upon by considerations of this kind. Party politics with me shall have nothing to do with it. But, sir, I am opposed to this amendment. Most of the gentlemen on the other side urge a constitutional objection to conferring the right of suffrage upon persons not citizens. I propose very briefly to examine this objection. The states of this Union are sovereign states, each in itself forming a complete and perfect government. The United States are associated together by a compact or treaty known as a constitution. That government is a limited, delegated government. The states of this confederacy have surrendered certain rights, by express stipulation, to the keeping of the confederacy;

and the powers which have not been given to the general government by this compact remain in the states. It is declared by the constitution "that all powers not delegated to the United States by this constitution nor prohibited by it to the states are reserved to the states respectively."

The power to make "uniform laws of naturalization" is delegated to the Congress of the United States; and the question here arises: Do we by making a person an elector make him a citizen of the United States? Or, in other words, must an elector necessarily be a citizen? Writers on the subject of citizenship have made three classes: aliens, denizens, and citizens or subjects. Aliens are foreigners not admitted to any of the rights of citizenship. Denizens are persons enjoying some of the rights of citizens but who have not become such citizens as those who by birth or naturalization have acquired that character. Mr. President, when we confer the right of voting upon an alien, we make him a denizen, not a citizen. A person may become a denizen by having the right to hold real estate, or by holding certain offices, or by enjoying any other privileges not allowed to aliens and which do not constitute him a citizen. Sir, this convention sent here by the people and acting for the people may confer or withhold the right of suffrage, as may be thought best.

I wish here to call the attention of the convention to the only two provisions of the Constitution of the United States which relate to the qualifications of electors. The first relates to the manner of choosing the President of the United States: "Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors," etc. Nothing is said here about electors being citizens, but the whole matter is left to the states. In regard to choosing members of Congress, it says: "The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors of each state shall have the qualifications requisite for the most numerous branch of the state legislature."

In these provisions the principle is recognized that the states have indisputable control over the qualification of electors. But, sir, this question was fully settled by Congress when Michigan was admitted into the Union. She had a provision in her constitution nearly identical with that proposed by the gentleman from Lafayette (Mr. Dunn). It was contended by some Senators, among

whom were Clayton and H. Clay, that Michigan had exceeded her powers as a state in admitting persons to the right of suffrage who had not been naturalized. On the other hand, Senators Wright, Benton, Buchanan, and others took the ground that Michigan had full power to say who should or should not be voters under her constitution. (Mr. Jackson here read an extract from the remarks of Mr. Buchanan on that occasion.) Here, Mr. President, Mr. Buchanan takes the high ground that the states are left "unrestrained and unlimited" to say "who shall be electors," and that they may, if they think proper, confer upon resident aliens the right of voting. Congress, in the act of admitting Michigan into the Union, settled this whole matter, and since that time the question has not been raised in Congress.

So much, sir, on the power of states to qualify electors.

Mr. Root said he would not consider the vote upon this question as a test of the sense of the convention on the subject. There were two propositions before the convention—the one contained in the original section, and the amendment under consideration. He was not fully satisfied with either but would vote for the amendment.

Mr. Davenport moved a call of the convention, which was ordered, and Messrs. Beall and Lovell reported absent.

The sergeant at arms was sent to procure the attendance of the absentees, and he having reported the absentees to be in attendance, and the question having been put upon the adoption of the amendment of Mr. Dunn, which was to strike out section 1 and insert: "Section 1. In all elections every white male citizen above the age of twenty-one years, having resided in the state one year next preceeding any election, shall be entitled to vote at any such election. And every white male inhabitant of the age aforesaid who may be a resident of the state at the time of the adoption of this constitution shall have the right of [voting as] aforesaid," it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 16, negative 53; for the vote see Appendix I, roll call 44].

Mr. Reymert moved to amend the article by striking out section 1 and inserting in lieu thereof the following: "Every male person of the age of twenty-one years or upwards, belonging to any of the following classes, who shall have resided in the state at the time of the adoption of this constitution or for one year next preceding any election shall be deemed a qualified elector:

1. White citizens of the United States.

2. White persons of foreign birth who shall have declared their intention to become citizens in compliance with the laws of the United States on the subject of naturalization.

3. Persons of Indian blood who have once been declared by law of Congress to be citizens of the United States, any subsequent act of Congress notwithstanding.

4. Civilized persons of Indian descent not members of any tribe."

Mr. Beall said if he understood the amendment just offered it was the same as the section reported by the committee, with a few exceptions. If the mover preferred the amendment and thought it would be more acceptable in his section of the territory than the original section, it should receive his cordial support. But as the most important difference between the amendment and the original section consisted in the substitution of one year in place of six months as the residence to be required, he would suggest to the mover that his object might be accomplished by modifying his amendment so as to strike out of the original section "six months" and insert "one year."

Mr. Lovell hoped his colleague would not modify his amendment. It was in good form and as terse in its structure as was consistent with that explicitness which was desirable in a constitutional provision. The substitution of one year for six months was not the principal difference between the amendment and the original section. It enumerated the several classes of persons who should be allowed to vote. It was much the same provision as the one contained in the first constitution and which so far as he was acquainted met with universal approbation.

[Mr. Estabrook moved to amend the amendment by adding the following proviso, viz.: "*Provided*, however, That the legislature shall at any time have the power to admit colored persons to the right of suffrage on such terms and under such restrictions as may be determined by law." And the question having been put upon the adoption of the same, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 35, negative 34; for the vote see Appendix I, roll call 45].

Mr. Beall understood the amendment as offered by the gentleman from Racine to be precisely the same as the provision in the old constitution upon that subject. To that he had no serious objections but, as amended, he would vote against it.

Mr. A. G. Cole said that the amendment of the gentleman of Walworth (Mr. Estabrook) met with his views and hearty concurrence. He believed that it also met with the views of at least a very respectable minority of his constituents both as to numbers and in

point of intelligence. From the vote given upon the subject of colored suffrage in his county, upon that subject he considered himself in a measure instructed in favor of the proposition. It was right in itself, and he hoped it would prevail.

Mr. Chase was in favor of the amendment as amended, while he would not have voted for it if it had not been so amended. He thought it was expedient at least to leave the legislature the power to regulate this matter.

Mr. Rountree said in regard to negro suffrage he had supposed that the vote on that question last spring had been sufficient to put the question at rest and he had not expected to see it brought up here in this form and, if adopted, he was confident it would materially prejudice the object for which they had assembled. He believed the people were the best judges of what they wanted, and they had decided this question by a very large vote.

Mr. Whiton advocated the propriety of leaving the question of negro suffrage open for the further action of the legislature.

[Mr. Whiton said it was true that the article giving suffrage to colored persons was voted down by a very large majority last spring; but he considered this a very different proposition from the one submitted at that time. He was not afraid to trust the legislature with the matter. Because public sentiment was so strong against this right last spring, it does not follow that it will always be so. Public sentiment may improve; and if that race become enlightened sufficient to entitle them to a right to vote, in heaven's name let them have it.—*Tri-Weekly Express,* January 6, 1848.]

Mr. Kilbourn approved of the general principle of the amendment as offered by the gentleman from Racine (Mr. Reymert) and intended to have voted for it, not expecting to be with other gentlemen choked off by the amendment which had been added. It was essentially the same proposition as the one offered the other day to strike out the word "white," which was rejected by a very large majority of the convention. True, the immediate bearing of the present proposition was not the same; but it was giving countenance to the principle; and the principle was so obnoxious to many, that they would not countenance it in any form and was sufficient, in his opinion, to secure the rejection of the constitution either by the people or by Congress. There was much feeling at the present time on this subject, not only here, but in Congress and throughout the country; and if such a provision were engrafted into our constitu-

tion there was danger, to say the least, that it would be rejected by Congress.

If the question was thus left to the legislature the question would be constantly agitated and the legislature would be constantly annoyed with it. The question should be settled for a time at least and not left open as a source of perpetual discord and strife. And he hoped some gentlemen who voted for the amendment would move a reconsideration and allow it to be rejected; otherwise he should feel constrained to vote against the whole amendment.

[Mr. Harvey inquired if the gentleman from Milwaukee (Mr. Kilbourn) meant to be understood as intimating that the adoption of the amendment under discussion, as part of the constitution, would be likely to induce the rejection of that instrument by Congress. (Mr. Kilbourn replied in the affirmative.) Mr. Harvey remarked this sounded strange to him, as he doubted not it did to the members of the convention generally It had been contended on this floor today by the advocates of the liberal provisions for extending to foreigners the right of suffrage, of whom the gentleman from Milwaukee was one of the most strenuous, that Congress has no power to inquire in respect to the constitution with which we might propose to come into the Union, beyond the question: Does it guarantee a "republican" form of government? That each state has a right to confer the elective franchise upon whom of her inhabitants she deems proper. This position was doubtless correct—a conviction of its correctness had certainly dictated the action of the convention in two votes already taken since the suffrage article had been under discussion. If correct in one case it was equally correct in the other, and he hoped neither the gentleman from Milwaukee nor the convention would stultify their own opinions by shaping their action through fears of this bugbear of rejection by Congress. Mr. Harvey said this regarding colored citizens and white citizens on an equality as respects suffrage was no new thing. Vermont, Massachusetts, Rhode Island, and other states made no distinction. New York entered the confederation with no distinction between free whites and free blacks and so continued until 1821, when she retrograded to a property restriction upon the latter.

Gentlemen insisted that the subject of colored suffrage should not be agitated in this convention, because, forsooth, a large majority of the people pronounced against it at the constitutional election last spring. Gentlemen would no doubt be glad to dispose of

the question in that way. Let one vote settle it forever. For his part he conceded the right of the majority to rule, but that majority had no right to dictate his opinions. Believing free suffrage a measure of sound policy and strict justice, he should on all proper occasions strive and vote to extend its blessings to all who were deprived of them. No apologist could be found on this floor for that civil slavery under which the colored population of the southern states was held; but shall we vote to enslave the same class politically? Political slavery, embittered as it is in the hard condition of the colored people, by an iron slavery of prejudice, is scarcely more tolerable than civil slavery. Let us emancipate them at once from the slavery of prejudice and from political slavery by putting the ballot in their hands, thus giving them their just political influence and communicating to their crushed spirits at once the hope and the impulse of improvement and elevation.

This amendment, however, proposed only to leave the question open for the future action of the representatives of the people. The friends of equal suffrage had failed in their effort to get the "white" restriction struck from the article. They now asked that the question be left so that it could be got at without calling a convention to change the constitution. Public sentiment was advancing on this subject. In the last convention but 14 out of 125 were found to vote to strike out this odious "white" restriction; and now, in face of the much vaunted popular majority against us, we have 21 in a convention of 69. Does not this show progress? And will gentlemen who ask us now to bow submissive to the will of the majority insist upon fixing this disputed question by our funda mental law so that it cannot be reached should the will of the majority change, until the ten or twenty years which might elapse before the people would vote to call another convention to revise their constitution?

It was objected to leaving this question open, that it would be a constant source of agitation at the popular elections. For his part he did not fear agitation—there was much of hope and reform in it. By agitation of this subject truth and right would be advanced. Agitation was a furnace which consumed venerable error, but from which truth came forth all the brighter.—*Tri-Weekly Express,* Jan. 6, 1848.]

Mr. Cole of Grant thought it was the duty of members to lay aside their own peculiar views upon isolated questions of this kind

and endeavor to make a constitution which the people would adopt. He did not fear the action of the Congress of the United States upon our constitution; but another congress was to pass upon it—a congress composed of the people of Wisconsin—and, his word for it, with such a provision in it, it would be rejected.

Mr. Beall expressed his decided opposition to the amendment as amended and his determination to vote against it here and at home. The gentleman from Rock had said that the people had not passed upon this proposition. They had not, it was true, passed upon it in that precise form, but he thought beyond all question they had passed upon the principle involved. The public sentiment in his section of the territory was decidedly hostile to extending the right of suffrage to colored persons, and they would not countenance it in any shape. He would consent to a separate submission of the proposition, but let it not be placed in the constitution. He wanted a constitution, and the people wanted a constitution, and he begged of the convention to lay aside these distracting questions and endeavor to form a constitution which the people would accept.

Mr. Chase said he was one of the fourteen who in the other convention voted for colored suffrage, and one of the twenty-two in this who voted the same way. However he might differ from his colleague on this subject, that difference was known to their constituents and would be settled by them. The very fact of the increased vote on this question, as alluded to by the gentleman from Rock (Mr. Harvey), was sufficient evidence that this subject ought to be left within the reach of the people through the legislature. He was disposed to vote for the amendment with the proviso but should certainly vote against it without. He was surprised that gentlemen should manifest so much fear lest the constitution should be rejected on account of colored suffrage being left to the legislature. He had heard long and strong arguments in that hall in the late convention, protesting against a separate submission of colored suffrage and declaring that even that course would defeat the constitution; but he was not aware that the vote against the late constitution was increased at all on that account. He deemed the amendment a matter of expediency as well as right, and he believed it would bring a much larger vote for the constitution than it would carry against it. This amendment, whether retained or not, would not alter his vote on the constitution, but he hoped the proviso would

be retained and the amendment adopted, as justice and expediency both required it.

Mr. Richardson declared himself opposed to the amendment as amended. The people had passed upon the question involved in the proviso, and they (the convention) had been elected by the same people who had passed their judgment upon the principle; and to insert a provision of this kind now would seem to be setting at naught the expressed will of the people. It would be regarded as an effort to thrust the question upon them against their known wishes

Mr. Doran moved a reconsideration of the vote just taken.

His reason for making the motion was that he had voted in the affirmative on the proviso under a misapprehension of the question. His attention had been withdrawn for a few moments from the subject under debate, and he voted under the impression that the question was on the amendment offered by the gentleman from Racine (Mr. Reymert) and not upon the proviso.

Mr. Estabrook said as he had proposed the amendment he would explain its objects. If any were curious to know his own private views, they could be learned by an inquiry among his immediate constituents, where he had often discussed this matter both in public and in private and had uniformly taken ground opposed to colored suffrage. Or his views might be more readily learned by reference to the vote taken on the question to strike out the word "white," where his vote would be found recorded in the negative. His reasons for this were sufficiently explained in his remarks when this question came up in committee of the whole. But a false issue has been made—the question was not "Shall negroes vote?" but "Shall the majority rule?" He regarded it as a fundamental principle of democratic faith that the majority should rule and that that majority should pay proper respect to the views and rights of the minority. If, then, it is proper that the majority should rule, it was clearly right to leave our fundamental law so that that majority can rule.

When he first came to this territory seven years ago a corporal's guard could not be found to favor colored suffrage. Since then the public mind has been progressing. Last spring the county of Walworth gave about four hundred majority in favor of it. Racine gave a majority for it; Rock and Milwaukee gave a large vote for it; and Waukesha gave a majority for it; and what he asked was

that when the public mind had advanced to a point where a majority should be in favor of abolishing this odious distinction, then that majority should not be bound hand and foot by constitutional prohibitions.

It is wonderful to witness the deep feeling which is aroused by the bare mention of the term "negro." Fat, sleek-headed Democracy revolts at it. Gentlemen assure us that the incorporation of this provision into our constitution will defeat its adoption. Are such gentlemen aware that it is in effect precisely like the provision of our organic law; could it be possible that gentlemen had suffered the horrors of such a law ten years and yet not known it? And yet, it was true that ever since we have had a territorial existence the legislature has had the same power that the proposed amendment confers.

Mr. Kinne remarked that his colleague (Mr. Estabrook) had advocated his proviso on the ground that a majority should have the right at all times to rule; but he seemed to have forgotten that the majority had passed upon this subject and decided against the principle involved. It was true that himself and colleagues represented a small portion of the territory which voted the other way. But the whole convention represented the whole territory and should be governed by the expressed will of the whole territory and not by their private opinions or the expressed opinions of their particular constituents upon a question which had been so clearly decided by the people of the whole territory. The present will of the majority on that subject could not be mistaken, and they should act with reference to the present will of the majority and not with reference to what might possibly be the will of the majority at some future time; for if they attempted to provide for every possible contingency of public sentiment they would find more work than they could accomplish in twenty years and more than he was willing to undertake.

Mr. Kilbourn coincided with the remarks of the gentleman from Walworth on his right (Mr. Kinne), but he would call his attention to the vote of Walworth County and show from the returns furnished by the secretary of the territory that although the majority of the votes cast upon that subject in that county were in favor of equal suffrage, yet the vote for equal suffrage constituted but about one-third of the whole number of votes cast at that election; and he accounted for the fact on the ground that those opposed to the

proposition had no fears of the adoption of the principle and did not take the trouble to vote on the question, while its friends rallied all their strength and secured a full vote of the friends of the measure.

There were two objects which the convention should keep strictly in mind: first, to form a constitution which should be strictly right as far as it should go; and secondly, to get one which would be satisfactory to the people and be approved by Congress; and all causes of discord and dissension should as far as possible be avoided.

Mr. Jackson wished to place himself and others who voted with him on this question in their right position. Some gentlemen had a way of charging abolitionism upon all who were in favor of equal suffrage. This was a mistake. He was in favor of equal suffrage but he was not an abolitionist in the common acceptation of the term. In his own town the vote was nearly ten to one in favor of equal suffrage; but they had by no means that proportion of abolitionists among them. They were in favor of it upon democratic principles merely, and not as a general thing because they were abolitionists.

The question was then put and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 36, negative 31; for the vote see Appendix I, roll call 46].

Mr. Secor moved that the convention adjourn. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 31, negative 37; for the vote see Appendix I, roll call 47].

The question was then put upon the amendment of Mr. Estabrook, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 34, negative 35; for the vote see Appendix I, roll call 48].

Mr. Jackson moved to amend the amendment by adding the following proviso, viz.: "*Provided,* That persons of foreign birth having resided in this state five years, shall not be entitled to the right of electors unless they shall within one year thereafter become citizens agreeably to the laws of the United States establishing a uniform rule of naturalization."

Mr. Judd did not like the proviso but was in favor of the amendment as it then stood. If the proviso prevailed it might operate unjustly by debarring many of the right of suffrage who were doing all in their power to become citizens. They might by the peculiar

circumstances in which they were placed be unable to procure the testimony necessary to the consummation of their citizenship. Cases had occurred in which foreigners from the force of these circumstances had been unable to perfect their citizenship for ten or fifteen years; and he thought it would be unwarrantable and unjust under such circumstances to deprive them of the privilege of voting. The position and circumstances of the territory were such that frequent cases of this kind were likely to arise. Foreigners were constantly arriving among us who had resided a few years in some other state but not long enough to complete their naturalization. They had taken the preliminary steps in the states from which they came, and it might be a long time before they could get the necessary proof of these facts. If the proviso prevailed, they would in many instances after having enjoyed the right of suffrage for several years be deprived of that right without any fault of theirs. He was not in favor of conferring the right of suffrage upon certain persons for a few years and then taking away that right.

And pending the question on said amendment Mr. Doran moved that the convention adjourn, which was agreed to. And a division having been called for, there were 33 in the affirmative and 20 in the negative. So the convention adjourned.

TUESDAY, JANUARY 4, 1848

Prayer by the Rev. Mr. Read.
The journal of yesterday was read and corrected.

Mr. Jackson said that he was represented in it as having made a motion to adjourn, which he did not make. The secretary said that the motion to adjourn was attributed to Mr. Jackson on his original minutes and he believed it had been so understood by the reporters. Mr. Chase said he believed the motion was made by Mr. Judd and moved the journal should be amended accordingly. Mr. Judd said he had not made the motion but was willing that it should appear so. The President hoped the gentleman from Racine (Mr. Jackson) would find a father for the motion, but until he did, there was no way of correcting the journal. Mr. Secor, having just come into the room, explained that the motion under discussion was made by himself.

Mr. Prentiss, from the committee on schedule and other miscellaneous provisions, reported No. 15, article on the schedule and miscellaneous provisions as follows:

SCHEDULE AND MISCELLANEOUS PROVISIONS

"Section 1. The political year for the state of Wisconsin shall commence on the first day of January in each year.

"Section 2. Any inhabitant of this state who may hereafter be engaged either directly or indirectly in a duel, either as principal or accessory, shall forever be disqualified from holding any office under the constitution and laws of this state and may be punished in such other manner as shall be prescribed by law.

"Section 3. No member of Congress nor any person holding any office of profit or trust under the United States (postmasters excepted) or under any foreign power, no person convicted of any infamous crime in any court within the United States, and no person being a defaulter to the United States or to this state or to any county or town therein or to any state or territory within the United States shall be eligible to any office of trust, profit, or honor in this state.

"Section 4. No person being elected or appointed to the office of governor, lieutenant governor, senator or representative in the legislature, or judge of the supreme or circuit courts, shall be eligible during his term of office to any other office of trust, profit, or honor in this state.

"Section 5. Every person elected or appointed to the office of governor, lieutenant governor, secretary of state, treasurer, attorney general, senator or representative in the legislature, or judge of the supreme or circuit courts, shall be required to declare in his oath of office, before he shall assume the

same, that he will not during the term for which he is elected or appointed to office accept the office of Senator or Representative in Congress."

The said article was read the first and second times and ordered printed.

Mr. Kinne called the attention of the convention to the fact that a committee had been authorized to apportion the duties of the several officers of the house, which had not made a report. His attention had been directed to the circumstance by observing that there were persons employed in the business of the convention who were not officers of it.

Mr. Chase said that as chairman of the committee referred to he presumed that it would be in order for him to make a verbal report. The object of the resolution under which the committee was appointed was to arrange some trifling matters which no one of the officers deemed it his duty to perform. The committee had assigned their several duties to the officers. Some portion of the duties of the messengers was performed by a person who was not an officer. This was because the messengers had more upon their hands than they could do.

Resolutions were introduced and read as follows, to wit:

By Mr. Carter: "*Resolved,* That it be referred to the committee on miscellaneous provisions to inquire into the expediency and propriety of establishing an article in the constitution making the town clerks of the several towns registers of deeds and mortgages in their respective towns."

By Mr. Lyman: "*Resolved,* That the constitution be engrossed on parchment, with the signatures of the members of this convention, to be deposited in the archives of the state, to be referred to the committee on revision."

Resolution No. 1, introduced by Mr. Lewis yesterday, relative to school lands, was then taken up.

Mr. Lewis remarked on the question of reference that the measure proposed by this resolution was one on which his constituents held different opinions. Those who were in favor of it argued that the school sections in some towns were very valuable, while in others they had been stripped of their timber and were comparatively valuless; and it was not right that these lands should go into a general fund, but that those towns which had protected the timber on their school sections and maintained them in good condition should be entitled to the benefit of their care and labor. Others again held a different view of the matter. Mr. Lewis hoped that the matter would be referred to the appropriate committee, that the proper course might be taken in reference to it.

The question was then put on the adoption of the same, and was decided in the affirmative.

Mr. O'Connor asked that leave of absence be granted to Mr. Dunn. Leave was granted.

No. 6, article on suffrage, was then taken up, when Mr. Prentiss moved to amend section 1 by striking out all of said section down to the fourth class inclusive and inserting the following: "Section 1. All male persons of the age of 21 years or upwards, belonging to any of the following classes of persons, and who shall have resided within this state for one year next preceding any election authorized by this constitution or by law, shall constitute the qualified electors at such election:

1. All white citizens of the United States.
2. All white persons, not citizens of the United States, who shall have declared their intention to become such in conformity with the laws of Congress for the naturalization [of aliens].
3. All white persons resident within this state at the time of the adoption of this constitution."

In support of his amendment Mr. Prentiss said the article as reported from the committee was very defective. It was originally so and had become more so from the amendments which had been adopted. The first section of the article declared that all free white male persons belonging to any of the following classes should be entitled to vote. Now the third and fourth classes included Indians who had been declared citizens by law of Congress, and civilized persons of Indian descent. These were not properly white persons, and the tendency of the article was to exclude from the right of suffrage the very persons classified as entitled to it.

The question was then put on the adoption of the same, and was decided in the negative.

Mr. Reymert moved to amend the article by striking out section 1 and inserting in lieu thereof the following: "Every male person of the age of twenty-one years or upwards, belonging to any of the following classes, who shall have resided in the state at the time of the adoption of this constitution or for one year next preceding any election, shall be deemed a qualified elector:

1. White citizens of the United States.
2. White persons of foreign birth who shall have declared their intention to become citizens in compliance with [the laws of the] United States on the subject of naturalization.
3. Persons of Indian blood who have once [been] declared by law of Congress to be citizens of the United States, any subsequent act of Congress notwithstanding.
4. Civilized persons of Indian descent not members of any tribe."

Mr. Judd moved to amend the amendment by striking out the words "at the time of the adoption of this constitution" and inserting at the end of the first clause the words "at such election"; which was accepted as a modification of said amendment.

Mr. Prentiss said by the amendment proposed by the gentleman from Racine (Mr. Reymert) it was provided that all persons belonging to the specified classes "who shall have resided in the state at the time of the adoption of the constitution or for one year next preceding any election" shall be deemed qualified electors. Now a point of much importance is here left undetermined and unprovided for. A man might be a resident at the time of the adoption of the constitution and leave the territory soon after, and be absent many years; yet according to this provision he would still be a citizen of the territory, and without the necessity of any subsequent qualification could vote at any election after his return. It was necessary to adopt some provision by which this contingency would be obviated, and he believed he had done so in his amendment which had been rejected.

Mr. Kilbourn inquired if the amendment proposed by the gentleman from Jefferson (Mr. Prentiss) would not exclude some of those who were entitled to vote for members of the convention and for the adoption of the constitution. If there was a saving clause by which this might be avoided he had no objection to the amendment.

Mr. Larrabee asked in what the amendment proposed differed from that of the gentleman from Racine (Mr. Reymert). Mr. Prentiss explained that the amendment would not operate as the gentleman from Milwaukee (Mr. Kilbourn) feared. For no election would probably be held until next April, so that no residents here now would be disfranchised. As regards the inquiry of the gentleman from Dodge (Mr. Larrabee), his (Mr. Prentiss') amendment differed from that proposed by Mr. Reymert in requiring an actual residence of one year in addition to a residence at the time of the adoption of the constitution.

Mr. Judd thought that the tendency of the proposed amendment would be to leave unprovided for all those persons included in the third and fourth classes of Mr. Reymert's amendment. He preferred the amendment proposed by Mr. Reymert. It covered all the ground he wished to see covered. He would have no objection, however, to changing the word "or" to "and" in that amendment, so

as to read "who shall have resided in the state at the time of the adoption of the constitution and for one year next preceding any election."

Mr. Lovell inquired whether the tendency of such an amendment would not be to debar all who should come to the territory subsequently to the adoption of the constitution from the right of suffrage. He thought the amendment of the gentleman from Jefferson as it then stood was correct. It was better to provide that all who were resident at the time of the adoption of the constitution should vote at the first election.

Mr. Schœffler thought that all difficulty might be obviated by a provision in the schedule. Mr. Lovell concurred with Mr. Schœffler in that opinion. An affirmative proposition could be inserted in the schedule giving all residents at the time of the adoption of the constitution the right to vote during the first year. After the first election had been passed they would then have the right to vote under the provisions of the article on suffrage.

Mr. Chase said that when lawyers disagreed it was sometimes the province of juries to decide. He thought that it had become now the province of the majority of the convention to act as jurors and take the question into their own hands. He was in favor of throwing out both the amendments proposed and adopting the article as printed.

Mr. Kilbourn thought he could suggest a measure by which the difficulties could be reconciled. This was to qualify the proviso by adding to it the words "the year 1848," after which the amendment of the gentleman from Jefferson should take effect. Mr. Prentiss thought the proviso of the gentleman from Milwaukee should more properly be inserted in the schedule which provides for the manner of voting on the adoption of the constitution. Mr. Schœffler was opposed to Mr. Kilbourn's proviso. He wished to allow the privilege of voting to all who were here at the time of the adoption of the constitution and who should have declared their intention to become citizens.

Mr. Castleman said he would vote against this or any other proposition requiring a residence of one year to entitle a citizen to become an elector. The convention yesterday decided to give to citizens under allegiance to other countries rights and privileges equal to those of the American citizen, whilst he enjoyed important immunities which were denied the American citizen. Though he

opposed the decision at the time, yet he now yielded his opinion to the voice of the majority. By the vote of yesterday the foreigner had been made a citizen as far as in our power to make him so; and he was now willing to meet him as such and could not see the propriety of requiring the citizen to do penance of a year before he could vote.

Mr. Whiton moved to amend the amendment by adding the following proviso, viz.: "*Provided*, That persons not citizens of the United States, [who] at the time of the adoption of this constitution were actual residents of Wisconsin, shall not have the right of electors after five years shall have elapsed from the adoption of this constitution. And *Provided*, further, That persons not citizens of the United States, who shall come into the state after the adoption of this constitution and who shall declare their intentions to become citizens of the United States as aforesaid, shall not have the right of electors after five years shall elapse from the time of declaring their intentions to become citizens of the United States as aforesaid."

Mr. Judd inquired whether the effect of this proviso would not be to exclude forever all persons who were not in the territory at the time of the adoption of the constitution. He could not otherwise understand it. Mr. Whiton replied in explanation.

Mr. Kilbourn did not think that the difficulty seen by the gentleman from Dodge really existed; but he perceived another difficulty. In a great number of instances it was next to an impossibility for foreigners who had resided a number of years in the United States to obtain the requisite legal evidence of their residence. He knew several instances of this, where the principle worked very badly. It was the great argument of those who had advocated a long probation for citizenship that it was necessary to give the foreigners time to become acquainted with our institutions. Now if they have resided among us for a period of five years they have had this opportunity, whether they have taken out their naturalization papers or not.

Mr. Schœffler fully agreed with his colleague from Milwaukee on this subject. He had been, himself, at one time in favor of some such plan as that proposed by the gentleman from Rock (Mr. Whiton) but on reflection had changed his views. There were many instances where foreigners had resided in this country a long time but had frequently changed their place of abode, when they found it impossible to give the necessary proof of residence. Such was the case of his own brother-in-law, who had resided several years in

New York, of which he could give no evidence, and had been obliged to complete a residence of five years in Wisconsin before he became entitled to his citizenship. Very recently, since he had been attending this convention, he had been called upon to act as interpreter for several foreigners who desired to file their notices of intention to become citizens; and from the anxiety they displayed in taking the initiatory steps he had little fear that they would be careless in taking the final ones.

Mr. Whiton made a few remarks.

Mr. Richardson said that he went on the whole-souled principle of giving aliens the liberty of doing as they pleased about becoming citizens or not. He did not wish to coerce or to persuade them. If of their own free will they choose to take the proper steps, he was always happy to greet them as fellow citizens.

The question was then put upon the adoption of the same, and was decided in the negative. The question was then put upon the amendment as modified, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 49, negative 15; for the vote see Appendix I, roll call 49].

Mr. Gale moved to amend the article by adding the following section, to wit: "Section —. The legislature at its annual session in 1850 and at its annual session in every fourth year thereafter shall have power to provide by law for the submission to the people of the question of equal suffrage to colored persons; and if a majority of the votes given by the electors at either of such elections shall be in favor of extending the right of suffrage to colored persons, then "all male citizens of the African blood possessing the qualifications required by the first section of the article on suffrage shall have the right to vote for all officers and be eligible to all offices that now are or thereafter may be elective by the people after the adoption of this constitution."

Mr. Kilbourn said that he should prefer to have the proposition of the gentleman from Walworth (Mr. Gale) so amended as to authorize the legislature to submit the question to the people at any and all times. Mr. Gale said that he had endeavored to submit his proposition in such a shape as would be satisfactory to all. He remembered that at the last convention Mr. Strong of Iowa had presented a similar proposition and that he had done it for the purpose of making the subject odious. He offered his proposition in good faith.

Mr. Kilbourn moved to amend the amendment by striking out the words "at its annual session in 1850 and at its annual session in every fourth year

thereafter" and inserting in lieu thereof the words "at any time," which was accepted by Mr. Gale as a modification of his amendment.

Mr. Harvey moved to amend the amendment as modified by substituting the following, viz: "Section —. The legislature shall at any time have the power to admit colored persons to the right of suffrage, but no such act of the legislature shall become a law until the same shall have been submitted to the electors at the next general election succeeding the passage of the same and shall have received in its favor a majority of all the votes cast at such election."

Mr. Kilbourn was opposed to both the original proposition and the substitute. When a majority of the people desired colored suffrage it was quite right that they should have it; but he was opposed to making this a matter for the legislature to decide upon. Mr. Harvey agreed with Mr. Kilbourn that it was the province of the constitution to define who should have the right of suffrage. But this convention had met with great embarrassment in deciding whether colored persons should have this right. He wished that the people should not be restricted in the expression of their feelings on this subject to the time when the constitution might be revised but to lay it open for them at all times.

Mr. Prentiss said that when the proposition had been made to strike out the word "white" from the suffrage article, he had voted against it. He had done so because he thought it was not an open question. It had been decided in the negative by the people last spring and by a very large majority; and it seemed to him that it would be just as proper to submit again to the people for their votes the rejected constitution as that proposition. He considered the proposition now made entirely unnecessary. If the people of Wisconsin at any future period should wish to adopt the principle of negro suffrage they could always do so by amending the constitution. Mr. Scagel said that it might be difficult to obtain the vote necessary for a revisal of the constitution, while at the same time a majority of the people might be in favor of negro suffrage. There was now a large minority in favor of this principle, and it was just that a large minority should have an opportunity of trying the principle hereafter.

Mr. Judd rose, not to say anything particularly in reference to the proposition, but to explain why he had voted in favor of the motion to strike out from the suffrage article the word "white." He had done so because he wished to admit to the right of voters those inhabitants specified in the third and fourth clauses of the article.

He did not wish to be quoted as having so voted as an abolitionist. As for the proposition now before the convention, he cared but little about it.

The question was then put upon the adoption of the same, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 37, negative 29; for the vote see Appendix I, roll call 50].

Mr. Bishop moved a call of the convention, which was ordered and [the roll having been called], Mr. Beall was reported absent. Mr. King moved that all further proceedings under the call be dispensed with, which was agreed to.

Mr. Rountree said that he objected to the convention providing for this matter at this time and under present circumstances. When the vote was taken on the constitution last spring, more than 33,000 votes were cast for and against it. On the question of colored suffrage not quite two-thirds of that number of votes were cast, and not one-fourth were in favor of that principle. Four-fifths of the whole number of legal voters in the territory having decided against this measure last spring, are we now to insert such a proposition into the constitution? It was quite enough for the convention to provide for measures not quite so unequivocally decided by the people. Gentlemen were forcing a provision into the constitution which the people did not ask nor want. Gentlemen may say that the principle of negro suffrage has gained ground in the territory but they have brought no proof of the assertion. His own experience led him to a contrary opinion. Legislatures did not always wait for an expression of public sentiment. We do not know at what time the question may be sprung upon the people. It was a good maxim never to force upon the people measures which they did not ask. The truth was, and gentlemen were aware of it, that thousands of voters who were opposed to negro suffrage did not vote at all on that question last spring. But he would take it upon himself to say that very few of those who were warmly in favor of that principle omitted to do so. He held that the constitution should contain as little extraneous matter as possible. He was not in favor of incorporating in it provisions to have reference to possible wants at a future and distant day. The people were sovereign and when they chose they could call a convention to form a constitution and incorporate such provisions as they might see fit. Such questions

should be let alone; and the approval of the people could not better be secured than by giving them a plain constitution.

Mr. Judd said that he had a high respect and esteem for the opinion of the gentleman from Grant (Mr. Rountree) but it seemed to him that his whole argument consisted in begging the question. He (Mr. Rountree) held that we should not incorporate any provision into the constitution on which the people had already expressed an opinion. But no such thing was proposed out of respect to those who voted in favor of negro suffrage last spring. We wish to say to them: "When a majority of the people are in favor of the measure you shall have it." Was not this fair? How then could gentlemen oppose it? Very many persons were in favor of negro suffrage who were not abolitionists—they believe it to be right in principle. What objection could be made to the constitution on the ground of the incorporation of such a provision in it? So far from being an abolition measure it seemed to him that it took from under them the ground on which abolitionists stood, for it gave them no cause of complaint. It said to them: "When you find a majority in favor of your measure you can adopt it."

Mr. Harvey said that the proposition went to the utmost limits of concession. He did not fear agitation upon it or upon any subject. Agitation was the fiery furnace in which error was tried.

The question was then put upon the amendment as amended, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 45, negative 21; for the vote see Appendix I, roll call 51].

The question was then put upon ordering the said article to be engrossed for its third reading, and was decided in the affirmative. Mr. Fitzgerald moved that the convention take a recess until half past two o'clock, which was agreed to. And a division having been called for, there were 44 in the affirmative, negatives not counted.

HALF PAST TWO O'CLOCK P.M.

The convention resolved itself into committee of the whole for the consideration of No. 8, article on militia; No. 10, article on finance; No. 11, article on eminent domain and property of the state; No. 12, article on internal improvements; and No. 13, article on acceptance of act of Congress, Mr. Jackson in the chair.

The article on the militia having been read, Mr. Chase moved to amend by striking out the entire article and inserting a clause to the effect that the legislature should decide who should form the

militia of the state and should pass such laws for its organization and discipline as should seem expedient. Mr. Kilbourn was in favor of this proposition. The committee in reporting the bill had simply made a transcript of the article in the old constitution, making a change in the matter of age only; they had reported it partly in deference to the gentleman who had originally drawn up the article —General Smith.

Mr. Chase said he had proposed the same amendment to the article in the old constitution, but as there were a great many military men in the former convention they had voted it down. The time might come when the militia of Wisconsin could be and ought to be organized. There was no necessity for this at present. In time of war the volunteer system seemed to be the proper one. We find it answers the purpose exceedingly well now, and he trusted we always should.

After some conversation as to the proper mode of presenting the subject, the amendment proposed by Mr. Chase was adopted.

The article on finance being then taken up and read, Mr. Kinne proposed to amend the article by striking out "$200,000" and subsituting "$100,000" as the maximum of debt.

Mr. Kilbourn stated that the old constitution contained "$100,000,' as was suggested, but that it had occured to the committee who had reported the article that contingencies might arise when that sum might be too small, and it was to provide for such contingencies that they had increased the amount. One of these contingencies might be the building of a penitentiary, which would probably cost at least $60,000.

Mr. Chase was in favor of Mr. Kinne's amendment. He thought the debt-contracting power a very dangerous one to be tampered with. A debt of $100,000 was quite as much as ought to be incurred; and it was unsafe to provide against contingencies that would so rarely occur.

On the amendment a division was called for, and the amendment was lost—20 voting in the affirmative and 25 in the negative.

Mr. Whiton moved to amend by striking out the whole of section 2 and made some remarks in support of his motion. Mr. Kilbourn said this subject had been elaborately discussed in the committee, and they arrived at the conclusion expressed in the article. The attention of the committee had been called to the subject by one of its members, and the question raised whether it was necessary to

declare that the property of the state should not be taxed. It was evident that the state could derive no advantage from taxing its own property, but the counties might derive a revenue by taxing the property of the state. For instance, the county of Dane might levy a tax upon the capitol, if no such prohibition as was contained in this section existed. The first section provided that all taxes within the state should be as nearly equal as may be. This provision would require that all the property in the state should be taxed equally, not the property of A, B, and C merely, but of all and without the restriction in the second section it was supposed that the legislature could not restrict the counties from taxing it.

Mr. Whiton modified his motion so as to amend the section by exempting the property of counties; which amendment prevailed.

Mr. Rountree offered an amendment as a new section, providing that all taxes should be by assessment of the value of the property taxed, excepting peddlers, hawkers, ferries, etc., and giving the legislature power to tax those separately.

Mr. Kilbourn would like to hear some reasons from the gentleman from Grant, in favor of the section he had proposed. It seemed to him very much like entering into the details of legislation. If they were to specify the kinds of property to be taxed and the precise mode of taxation they should begin with real estate and go through with an enumeration of every species of property to be taxed and the mode of taxing it. He thought the first section was sufficient upon that subject. It was simple and concise and covered the whole ground.

Mr. Rountree thought the first section did not cover the whole ground. He wished to have the legislature bound by some rules which would secure equal taxation, some rules which would require that taxation should be based upon some fair valuation of the property taxed and not left to tax property coming under the same general denomination equally, while the value might be very different. He considered it a matter of very great importance. Our present laws did not secure a just and equitable valuation of property as the rule of taxation; and it was this kind of partiality and favoritism extended to particular kinds of property which he wishes to see prohibited by the constitution. If gentlemen expected to get a good constitution without having anything in it, they would find themselves mistaken in the end. He wanted a constitution which common people could understand, and not one which no one

could understand without going to a lawyer or to those who made it a business to tell them what it meant.

Mr. Chase could not see for his life what force or effect the section would have if placed in the constitution, for the legislature would have the same power without it as with it. He agreed with the gentleman from Grant that the value of the property should be the basis of taxation, but it seemed to him that the gentleman was going against his own principle in providing for the taxation of peddlers, hawkers, and jugglers, for he could not understand what kind of property they were. He thought they could not be regarded as things of much value, and for his own part he considered them rather as nuisances than otherwise.

Mr. Doran moved to amend section 2 so as to exempt from taxation the property of towns, cities, and the wards of cities. Mr. Lovell suggested to the gentleman from Milwaukee a modification of his amendment so as to exempt generally the property of municipal corporations. Mr. Doran declined so to modify his motion. The term "municipal corporations" applied only to corporations possessed of legislative powers and did not cover the ground which he wished to cover. He wished the exemption to apply to bodies corporate, which were not always municipal corporations. The several wards in the city of Milwaukee possessed separate property which he thought should be exempted from taxation, and yet they were not in themselves municipal corporations.

Mr. Chase would inquire for what purposes those wards held their separate property. If held for educational purposes it was already exempted by the section with all other property held for the same purpose. If it were held for charitable purposes it was already exempted with all other property held for the same purpose. If it were held for any purpose for which it ought to be exempted it was already exempted by the general provision for that purpose, and if it were held for purposes of speculation it ought to be taxed. Mr. Kilbourn explained that the several wards own fire engines and engine houses, public grounds, markets and market houses, which although not devoted to either charitable or educational purposes, were public property and should be exempt from taxation.

The amendment was adopted.

Mr. Whiton moved to amend the first section by adding the words "and shall be levied upon such property as the legislature shall prescribe." Mr. Chase said the amendment proposed by the

gentleman from Rock would improve the section, but it would improve it still more if he would include in his amendment a proposition to strike out the words "may be" in the first line and insert the word "practicable," so that it would read "all taxes in this state shall be as nearly equal as practicable." The words "may be" covered all sorts of amendments, and as they stood in the section they had no meaning at all. The section might as well have read: "All taxes in this state 'may be' as nearly equal as they 'shall be.'" They "shall be" as they "may be," or they "may be" as they "shall be,' and this was all the sense there was attached to the words.

Mr. Whiton's amendment was adopted, when Mr. Chase moved the amendment of which he had just spoken, and it was adopted.

Mr. Lovell moved to amend by adding a new section, as follows: "In addition to the above limited power to contract debts the state may contract debts to repel invasion, suppress insurrection, or defend the state in time of war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised or to repay such debts and to no other purpose whatever," which was adopted.

Mr. Cotton moved to strike out the second section. Mr. Judd (would like to have some reason for striking out the section after all the trouble they had had in amending it. He read the several provisions it contained and commented briefly on the importance of each.) He approved of every one of its provisions and hoped it would not be stricken out. Mr. Kilbourn thought the section could do no harm and might do some good. It recognizes the principle which the legislature should adhere to in exempting property from taxation. If stricken out, the very history of that fact might be construed as discountenancing the principle. Mr. Lovell hoped the section would be stricken out, for the reason that it did no good, for he believed that in an instrument of this nature whatever did no good must necessarily do harm. If it did no other harm it would embarrass the discretion conferred upon the legislature by the first section as amended. The motion to strike out was agreed to. Mr. Whiton moved to strike out the first line of the first section to the word "practicable" inclusive, and insert: "The rule of taxation shall be uniform throughout this state," which was adopted.

Mr. Doran moved to insert a section as section 2, providing that the property of the state and of counties, towns, cities, and wards of cities and all property held for educational or charitable pur-

poses should be exempt from taxation. Mr. Chase thought this the same section in substance as the one stricken out. Mr. Doran said the gentleman from Fond du Lac was mistaken. The section stricken out allowed the legislature a discretionary power, while the section he had proposed was imperative in respect to property devoted to educational or charitable purposes.

Mr. Chase was still more convinced of the impropriety of adopting the section. Who was to determine what was a charitable purpose and what was not? He might regard some objects as charitable objects, in respect to which but very few members of the convention would agree with him. Again, if they attempted to specify in the constitution what kinds of property should be exempt from taxation, they should make the specification complete and enumerate every kind of property which should be exempt.

Mr. Lovell wished to state an objection to the proposed section, which he did not recollect to have heard alluded to in the course of the debate. Such were the established rules of construction with reference to constitutional provisions, that if the constitution made certain exemptions it would operate as a prohibition upon the legislature to make any other or further exemptions. If, therefore, the proposed section should be adopted it would make an end of all legislation on that subject. The legislature would have no power to exempt any other property from taxation, whatever might be the necessity for and propriety of such exemption.

The amendment was rejected and the article laid aside to be reported, and the article on eminent domain and property of the state was taken up, and after an unsuccessful attempt to amend by striking out that part of the article relating to riparian ownership, it was laid aside to be reported, and the article on internal improvements was taken up.

Mr. Chase moved that the committee rise and report the articles which had been laid aside and ask leave to sit again on the article on internal improvements, which was agreed to.

The committee then rose and by their chairman reported articles No. 8, 10, and 11 back to the convention with amendments thereto, and asked leave to sit again on articles No. 12 and 13. Leave was granted.

Mr. Gale moved that the convention adjourn, which was disagreed to.

The question then recurred on concurring in the amendment of the committee of the whole to No. 8, article on militia, which was to strike out the whole article and insert as section 1: "The legislature shall determine what

persons shall constitute the militia of this state and may provide for organizing and disciplining the same in such manner as shall be prescribed by law"; when Mr. Lovell called for a division of the question. The question was then put on striking out the whole article, and was decided in the affirmative.

[The question was then put on inserting in lieu thereof the amendment of the committee, and was decided in the affirmative.] And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 35, negative 26; for the vote see Appendix I, roll call 52].

Said article was then ordered to be engrossed and read a third time.

On motion of Mr. Richardson the convention adjourned.

WEDNESDAY, JANUARY 5, 1848

Prayer by the Rev. Mr. Penman.
The journal of yesterday was read.

Mr. Beall arose to make a few remarks in reference to the resolution recently adopted for printing sketches of the debates. He considered that resolution as directly in violation of all law and precedent. Since its passage he had anxiously and carefully examined every authority he could find in the library but he had found nothing that bore the semblance of a precedent to it. Entertaining these views he wished to wash his hands of all participation in the measure and requested that whatever remarks he should hereafter make in the convention should not be reported by the reporters engaged in preparing the sketches of the debates for publication.

Mr. Judd said that he also wished to place himself right before the people on this subject. He considered the passage of the resolution a violation of law and he, too, requested the reporter not to make any reports of what he should say hereafter.

Mr. King introduced the following resolution, which was read, to wit: "*Resolved*, That the returns of the census of Wisconsin for the years 1837, 1840, and 1842 be added to the table directed to be printed by vote of the convention on the third instant.*

Mr. King moved the suspension of the fifth rule for the adoption of said resolution now, which was agreed to. And the question having been put upon the adoption of said resolution, it was decided in the affirmative.

Resolutions were introduced and read as follows, to wit:

By Mr. Kinne: "*Resolved* that a committee of five be appointed to inquire into and report the rate of compensation suitable to be allowed and paid to the officers of this convention."

By Mr. Scagel: "*Resolved*, That a committee of three be appointed to report the per diem pay of the officers of this convention."

By Mr. Larrabee: "*Resolved*, That the printers of the convention be directed to make out separate bills of the expense or reporting, printing, and binding the journal, and of printing, reporting, and binding the sketches of debates, and that the members of the convention voting for this resolution will pay for the latter work out of their own pockets."

By Mr. Foot: "*Resolved*, That the committee on education, schools, and school funds be instructed to inquire into the expediency of providing that all moneys and all the net proceeds of all property, both real and personal, that has been or may be granted for educational purposes (except such lands as have been heretofore granted for the purpose of a university or which may

*For these census reports see pages 350-357.

be granted for some particular purpose), and all moneys and the clear proceeds of all property which may accrue to the state by forfeiture or escheat and all clear proceeds of all the sections numbered sixteen within the state shall be a state fund for the support of common schools, the capital of which shall be preserved inviolate; and the provision shall be made by law for the disposal of such lands by sale or rent and for making an equitable division of the interest of said fund annually in some just ratio to the number of children between the ages of five and sixteen years."

By Mr. Lewis: "*Resolved*, That committee No. 2, on executive, legislative, and administrative provisions, be instructed to inquire into the expediency of restricting the annual session of the legislature of this state to a term not exceeding (a certain number of days to be specified); and whenever the legislature shall continue its session beyond the time specified, they shall do so upon one-half the per diem allowance, except in cases of extreme emergency, which cases the governor may have power to determine.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 6, article on suffrage; No. 8, article on militia.

Resolution No. 1, introduced yesterday by Mr. Carter, was taken up. Mr. Carter moved to modify the same by striking out the word "miscellaneous" and inserting in lieu thereof the words "legislative and executive," which was agreed to. The resolution as modified was then adopted.

Resolution No. 2, introduced by Mr. Lyman yesterday, was then taken up; and the question having been put upon the adoption of the same, it was decided in the affirmative.

Mr. Fenton introduced the following resolution, which was read, to wit: "*Resolved*, That this convention do adjourn sine die on Saturday, the fifteenth day of January, at nine o'clock A.M.

No. 6, article on suffrage, was then read the third time, when Mr. Kilbourn moved that the article be recommitted to the committee of the whole with instructions to amend the same by striking out section 7 and adding the following proviso to section 1: "*Provided*, That the legislature may at any time extend by law the right of suffrage to persons not herein enumerated; but no such law shall be in force until the same shall have been submitted to a vote of the people at a general election to be held subsequent to the passage thereof and approved by a majority of all the votes cast at such election."

Mr. Kilbourn said that it would be observed that the amendment embraced the substance of the last section of the article proposed yesterday, but that it did not contain the words "colored suffrage," and he believed it would be more acceptable to the people. Mr. Lakin objected. Mr. Lovell moved a suspension of the rules so as to sustain the amendment. The Chair stated that this was a case in which the rules could not be suspended. Mr. Kilbourn moved that the bill be recommitted to the committee of the whole with instructions to insert the amendment. Mr. King asked whether the effect of this motion would be to confine the action of the committee to this bill. The Chair decided that it would.

The question was then put upon the recommitment of the article and it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 45, negative 15; for the vote see Appendix I, roll call 53].

No. 8, article on militia, was then read the third time.

Mr. Lovell hoped that the amendment of the committee would not be adopted by the convention. He believed that the amendment conflicted with the act of Congress. It gave to the legislature the power of declaring who should be the militia of the state, while the power had been expressly reserved for Congress.

Mr. Chase argued that it certainly was the province of the constitution of the new state to declare who should be the militia. The former constitution had done so, and it had been accepted by Congress. If, then, it is the province of the constitution to declare who should be the militia, it was singular if it could not provide that the legislature should so declare.

Mr. Whiton spoke in opposition to the proposition of Mr. Lovell. Mr. Lovell said that it struck him that the gentleman from Rock (Mr. Whiton) was mistaken in his construction of the Constitution. The Constitution gave certain powers in reference to this matter to Congress and reserved others to the states. He knew of no decision of the Supreme Court in reference to this subject, but the member from Rock was mistaken in supposing that Congress had not passed any law in reference to the militia. He thought it would be the better course to leave all provisions on this subject out of the constitution. Its insertion would give no power to the legislature to act upon the matter, which they would not have without it.

Mr. Chase said that the last convention had inserted in the constitution which they had framed a long article on the subject of the militia. He there made every effort to strike it out but found himself almost alone in his views. It now seemed to be the desire of some gentlemen to go to the other extreme and strike out every proposition on the subject. He was not in favor of such a course but preferred to see the amendment adopted in the committee retained.

Mr. King said that the objection which he had to the amendment was precisely the same as that of the gentleman from Racine. Congress had legislated upon that subject by the act providing for the organization and disciplining of the militia. The article as

amended declared that the legislature should determine what should constitute our militia. Congress had already done so for us.

Mr. Estabrook could see nothing conflicting between the article as amended and the law of Congress. Mr. Estabrook read an extract from the act of Congress. The act provided that the passage of laws for training the militia should be reserved to the states. He argued that training included organizing and disciplining.

The question was then put upon the passage of the article, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 43, negative 20; for the vote see Appendix I, roll call 54].

No. 10, article on finance, was then taken up. And the question being on concurring in the first amendment of the committee of the whole, which was to strike out the first section and insert in lieu thereof as follows: "The rule of taxation shall be uniform throughout this state; and taxes shall be levied upon such property as the legislature shall prescribe," Mr. Judd moved to amend the amendment by inserting the following as sections 1 and 2:

"Section 1. All taxes levied in this state shall be uniform and equal and shall be assessed upon a just valuation of real and personal property.

"Section 2. The property of the state, property of any common school, university, college, or seminary of learning, all houses erected for and dedicated to the public worship of God, and the lots which they necessarily occupy for such purpose, and all public burying grounds and such other property as the legislature shall prescribe by law, shall be free from taxation."

And the question being put upon the adoption of the same, it was decided in the negative.

The first amendment of the committee was then concurred in.

The second, third, and fourth amendments of the committee, which were: "Second. Strike out the second section.

"Third. Strike out in fifth section the words 'unless in time of war, to repel invasion, or suppress insurrection.'

"Fourth. Insert after section 7: 'Section —. In addition to the above limited power to contract debts, to repel invasion, suppress insurrection, or defend the state in time of war; but the money arising out of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever,'" were then severally concurred in.

Mr. Kinne moved to amend section 7 by striking out in the third line the word "two" and inserting "one"; also by striking out in the eighth line the word "ten" and inserting "five."

Mr. Kinne then moved to amend the seventh section by striking out "$200,000" and inserting "$100,000" and by striking out "ten" years and inserting "five." In support of this amendment Mr. Kinne said the arguments used yesterday in committee of the whole in favor of retaining the larger sum appeared to him to be unsatis-

factory. The provisions made for raising money in cases of war, etc. did away with the necessity of making any provision in the constitution, at this time, for a large debt. As regarded the argument used by the gentleman from Milwaukee, Mr. Kilbourn, that a debt exceeding $100,000 might be required for the purpose of building a penitentiary, he did not agree to it. If a penitentiary should be erected, it was not at all probable that it could be completed within the space of a single year. On the contrary, it would probably require four or five years to construct it. The usual course taken in such cases was to levy a certain sum per annum, which was provided for in section 6. The expenses of building a penitentiary could not properly be considered as extraordinary expenses, such as were provided for by section 7, and therefore would not be a legitimate subject for a public debt. If the object of gentlemen in urging the retaining of the larger sum was to enable the state at some future time to contract debts for internal improvements, or if it was to carry out the old theory that a public debt was a public blessing, he thought the convention were not prepared to agree with them. He did not distrust the people, but he knew that it had sometimes happened in the history of every state in the Union that the legislature has acted unfairly. Legislatures frequently involved their states largely in debt without any advantage to the people. The members of this convention were sent here to guard the people against such evils. This was a subject on which members of the legislature were very apt to act contrary to the wishes of their constituents. He knew that it was quite consistent with a general banking system and banking privileges that there should be a public debt—that a debt of several millions hanging over a state was very convenient for carrying out the views of those who were in favor of banks. For his own part, he never had heard that any objection was made to the old constitution on the ground that it limited the state debt to $100,000. As regarded the time of repayment, he thought that the generation which incurred a debt should liquidate it, and that the term in which this should be done should be made as short as possible.

Mr. Chase called for a division of the question.

He said he hoped the amendment would prevail, but he was more anxious that the portion of it which limited the debt to $100,000 should be adopted than that which limited the time of repayment.

If anything was to be strictly guarded against, it was the debt-creating power. Nothing was more dangerous to tamper with. Nothing needed more restrictions.

Mr. Kilbourn said that from the argument of the gentleman from Walworth (Mr. Kinne) he was led to believe that he labored under the impression that a debt of $200,000 might be, under the provisions of the article, authorized annually. Such was not the case. It was expressly provided that it could be raised only for a period of ten years. The only object of raising the sum to $200,000 was to enable the legislature to meet and provide for extraordinary contingencies. A work of internal improvement must be a very small one which could be limited to $200,000. And that sum would be very insignificant as a capital for state banking. It would seem, therefore, that the sum provided for was too small to be subject to great abuses.

Mr. Gale was unable to see for what purpose a debt of $200,000 could be required, unless it was created for purposes of internal improvement, and as he intended to oppose all such projects undertaken by the state he was in favor of the amendment.

Mr. Kinne said that he did not suppose that this sum of $200,000 was to be raised annually; but that he was satisfied that the sixth section provided for every contingency that was likely to occur. Under the provisions of that section it was competent for the legislature to levy from year to year a sum sufficient to build a penitentiary in four or five years. He was opposed to a public debt. Ever since he had been in the territory there had been a constant effort to ascertain what the public debt of this territory amounted to. This effort was thus far unsuccessful; and to this day it was not ascertained whether the territory was in debt at all, or if so, to what amount.

The question was then put upon striking out "2" and inserting "1," and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 37, negative 24; for the vote see Appendix I, roll call 55].

The question was then put upon striking out "ten" and inserting "five," and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 41, negative 18; for the vote see Appendix I, roll call 56].

Mr. Judd moved to amend the article by inserting the following as section 2: "The property of the state, property of any common school, university, college, or seminary of learning, all houses erected for and dedicated to

the public worship of God, and the lots which they necessarily occupy for such purpose, and such other property as the legislature shall prescribe by law, shall be free from taxation."

Mr. Chase said that they had already successfully combated the principle of exempting certain privileged kinds of property from taxation and he trusted they would not now undo their rule by adopting the proposition of the gentleman from Dodge (Mr. Judd). That gentleman was extremely sensitive on the subject of exempting from taxation certain descriptions of property. Other members might be equally anxious to exempt other kinds. If the door was once opened to this principle, it was difficult to say when it could be closed.

Mr. Lovell called for a division of the question. He hoped no specific exemption would be adopted. If such a provision were incorporated in the constitution it would cut off the action of the legislature on the subject, and it would be left to the worst kind of legislation in the world—judicial legislation. The manner in which a fixed system of exemption from taxation would operate might be very oppressive. A block of buildings might be erected in Milwaukee, the lower stories of which might consist of stores, while the whole upper part might be devoted to a church. Under the proposed provision the entire building would be exempted from taxation. This would be manifestly wrong. Property employed for purposes of profit might in this and other ways be protected from taxation. The only proper course was to leave the settlement of this question to the legislature.

Mr. Richardson said that he saw there was much opposition to the principles contained in the first section of his amendment. Gentlemen seemed to wish the matter left in the hands of the legislature, lest, perhaps, if the question were settled in the convention, their silver plate and articles of luxury would be taxed. If the matter were left to the legislature, they might be able to exert an influence which would confine the taxes to real estate. For his own part, he was willing to have taxes levied on his personal property as well as anything else he possessed.

Mr. Kilbourn was opposed to the amendment of Mr. Judd inasmuch as it undertook to enumerate property to be exempted from taxation but did not enumerate enough.

The question recurring on striking out the second section, the President stated that if the motion to strike out prevailed it would not be in order to amend. Such was the operation of the rules adopted by the convention. Mr. Judd remonstrated against the decision of the Chair and argued that it would be unreasonable. The President observed that was the fault of the rule, not of the Chair. Mr. Lovell said that when the gentleman from Dodge (Mr. Judd) insisted on the adoption of that rule in its present form, he (Mr. Lovell) knew that it would bring about some such absurdity. The gentleman from Dodge, however, ought not to complain, as the rule in question had been adopted at his own instance. Mr. Whiton and Mr. Judd made some remarks.

The question was then put upon the adoption of the same, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 17, negative 42; for the vote see Appendix I, roll call 57].

Mr. Judd moved to amend the article by adding the following section: "Section —. There shall not at any time be issued, in any form or manner, under the authority of this state, any state scrip, certificate, or other evidence of state debt, except for such debts as are authorized by the seventh and eighth sections of this article."

Mr. King asked if the effect of the amendment would not be to cut off the payment of all debts incurred previously and for which the territory was liable. The state must provide for the payment of the territorial indebtedness.

Mr. Judd made some remarks against the issuing of state scrip.

Mr. Whiton spoke in opposition to Mr. Judd's amendment.

Mr. Kilbourn said that if gentlemen would refer to the old constitution they would find there the amendment of the gentleman from Dodge, in substance. If a public debt was prohibited, scrip would not be issued. The whole ground aimed at by the gentleman from Dodge was covered by the article as it now stood. The insertion of the proposed amendment would not in any manner strengthen the article, nor would its omission empower the legislature to issue scrip.

Mr. Lovell suggested that the gentleman from Dodge should specify the kind of debt for which he wished the issuing of scrip prohibited.

The question was then put upon the adoption of the same, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 34, negative 27; for the vote see Appendix I, roll call 58].

Mr. Nichols moved to amend section 7 by striking out the words "but such debts shall never singly or in the aggregate exceed $100,000," which was disagreed to.

The question was then put upon ordering the article to be engrossed, and was decided in the affirmative.

No. 11, article on eminent domain and property of the state, was then taken up. And the question being on concurring in the amendment by the committee of the whole, the amendment was concurred in.

The question was then put upon ordering the article to be engrossed, and was decided in the affirmative.

On motion of Mr. Larrabee the convention took a recess until half-past two o'clock.

HALF PAST TWO O'CLOCK P.M.

The convention resolved itself into a committee of the whole for the consideration of No. 12, article on internal improvements; No. 13, article on acceptance of act of Congress; No. 6, article on suffrage; No. 11, article on eminent domain and property of the state, Mr. Jackson in the chair.

The article on internal improvements was taken up, when Mr. Sanders offered the following substitute:

"Section 1. This state shall encourage internal improvements by individual associations and incorporations; but shall not carry on or be a party in carrying on any work of internal improvement, except in cases authorized by this article.

"Section 2. The legislature shall have power at a regular session to pass laws authorizing the improvement of the navigable waters leading into the Mississippi or Lake Michigan and the carrying places between the same: *Provided,* however, That the legislature shall not pass more than one act at the same session, and such law shall embrace no more than one object of improvement, which shall be singly and specifically stated therein.

"Section 3. Every such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay, the interest on the debt that may be incurred by such work, as fast as the same shall fall due, and also to pay and discharge the principal of such debt within fifteen years from the time of contracting thereof.

"Section 4. On the final passage of such law, in either house of the legislature, the question shall be taken by ayes and noes, to be duly entered on the journals thereof. No such law shall take effect until it shall at a general election have been submitted to the people and have received a majority of all the votes cast at such election.

"Section 5. The legislature may at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same, and may at any time by law forbid the contracting of any further debt or liability under such law; but the tax imposed by such act in proportion to the debt and liability which may have been contracted in pursuance of such law shall remain in force and be irrepealable and be annually collected, until the proceeds thereof shall have been sufficient to pay and discharge the interest and principal of such debt and liability.

"Section 6. The money received from any loan or stock creating such debt or liability shall be applied to the work specified in the act authorizing such debt or liability and for no other purpose whatever.

"Section 7. The state shall not at any time incur or create debts or liabilities for works of internal improvement which shall singly or in the aggregate exceed $300,000.

"Section 8. No such law shall be submitted to be voted on within four months after its passage, or at any election where any other law, or any bill, or any amendment to the constitution shall be submitted to be voted for or against.

"Section 9. When grants of land or other property shall have been made to the state, especially dedicated by the grant to particular works of internal improvement, the state may carry on such work and shall devote thereto the avails of such grants so dedicated thereto."

Mr. Sanders remarked that internal improvements were a legitimate object for the attention of the government. He presumed that all would agree to this principle. Why, then, should the hands of the government be tied up in reference to them? He was aware that a strong prejudice had been imbibed of late years against the undertaking of such works by the state. The cause of it was obvious Many of the states had engaged in wild and impracticable schemes of internal improvement and had undertaken works which they neither needed nor were able to pay for. In this way enormous state debts had been contracted, and some of them had been re-

duced to a condition little short of bankruptcy. This had very naturally turned the current of popular opinion against allowing the states to engage without restriction in works of this kind; but he believed that many were taking the opposite extreme and going as far from correct principle and sound policy in the opposite direction.

Because some of the states, when possessed of unlimited power upon the subject, had in a period of general excitement and speculation abused that power, it did not follow of necessity that it was not a salutary power under proper restrictions and limitations. Works of internal improvement by the state, when judiciously undertaken, had been of incalcuable benefit not only to the states undertaking them, but to many of the neighboring states, and to the nation at large. The state of New York by her system of internal improvements has doubled her wealth and rendered herself great and powerful; and not only so, but all the states around her have shared largely in the benefits flowing from her enlightened policy. But for the Erie Canal, Illinois and Wisconsin would this day have been little else than a wilderness. His object in offering the substitute was to leave it in the power of the legislature, with the sanction of a vote of the people, to improve the navigation of the streams in the state, which by the Ordinance of 1787 were declared to be public highways and forever free. Many of the streams which were now nearly useless as thoroughfares might with a small expenditure become important channels of trade. He did not believe the legislature would have the right to place these public highways under the control of chartered companies, for they had been declared by the highest authority forever free.

The substitute which he had offered guarded against the abuse of the power by limiting the debt which might be contracted, by requiring a vote of the people upon any law authorizing any such work, before it should go into effect, and by providing that not more than one project of internal improvement should ever be submitted to a vote of the people at any one election.

Mr. Fox was in favor of internal improvements by the state but he could not vote for the amendment of the gentleman from Racine. He had an amendment drawn up which he intended to offer at a proper time, but he would not offer it then, but would wait and see what would be the fate of the substitute under consideration.

The question was then taken and the substitute rejected.

Mr. Fox then moved to amend the first section by adding the following: "Strike out all after the word 'by' in the first section and insert as follows: 'and by law for some single work or object to be distinctly specified therein. Such work to have but two points of termination; and such law shall provide for levying a tax sufficient with other sources of revenue to complete said work within ten years after the passage of the same. And no such law shall be valid or take effect unless the same shall have been submitted to a distinct and separate vote of the electors at the next general eelction succeed ing the passage of such law, and shall have received in its favor a majority of all the votes cast at such election.'"

Mr. Fox said that this provision in relation to the matter would be satisfactory to him and satisfactory to his immediate constituents so far as he was acquainted with their views upon the subject. He believed the state should have the power under certain restrictions to undertake works of internal improvement and he hoped the amendment might meet with the favorable consideration of the committee. He would be satisfied with this and with nothing short of it. He did not think it was the business of the convention to say that the people in their state capacity should never undertake any such work, but to proclaim the contrary if they should see fit so to do.

The amendment was rejected and the article laid aside to be reported.

The committee then arose and by their chairman reported articles No. 11, 12, and 13 back to the convention without amendments; and No. 6 with amendment, as instructed by the convention.

No. 6, article on suffrage, was then taken up. And the question being on concurring in the amendment of the committee of the whole, it was decided in the affirmative.

The question was then put upon the passage of the article, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 52, negative 13; for the vote see Appendix I, roll call 59].

No. 12, article on internal improvements, was then taken up, when Mr. Sanders moved to amend the same by substituting the following:

"Section 1. This state shall encourage internal improvements by individual associations and incorporations ["individuals and incorporations" in MS], but shall not carry on or be a party in carrying on any work of internal improvement except in cases authorized by this article.

"Section 2. The legislature shall have power at a regular session to pass laws authorizing the improvement of the navigable waters leading into the

Mississippi or Lake Michigan and the carrying places between the same: *Provided,* however, That the legislature shall not pass more than one act at the same session, and such law shall embrace no more than one object of improvement, which shall be singly and specifically stated therein.

"Section 3. Every such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay, the interest on the debt that may be incurred by such work as fast as the same shall fall due, and also to pay and discharge the principal of such debt within fifteen years from the time of the contracting thereof.

"Section 4. On the final passage of such law in either house of the legislature the question shall be taken by the ayes and noes, to be duly entered on the journals thereof. No such law shall take effect until it shall at a general election have been submitted to the people and have received a majority of all the votes cast at such election.

"Section 5. The legislature may at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same, and may at any time by law forbid the contracting of any further debt or liability under such law; but the tax imposed by such act in proportion to the debt and liability which may have been contracted in pursuance of such law shall remain in force and be irrepealable and be annually collected, until the proceeds thereof shall have been sufficient to pay and discharge the interest and principal of such debt and liability.

"Section 6. The money received from any loan or stock creating such debt or liability [shall be applied to the work specified in the act authorizing such debt or liability] and for no other purpose whatever.

"Section 7. The state shall not at any time incur or create debts or liabilities for works of internal improvement which shall singly or in the aggregate exceed $300,000.

"Section 8. No such law shall be submitted to be voted on within four months after its passage, or at any election where any other law, or any bill, or any amendment to the constitution shall be submitted to be voted for or against.

"Section 9. When grants of land or other property shall have been made to the state, especially dedicated by the grant to particular works of internal improvement, the state may carry on such work and shall devote thereto the avails of such grants so dedicated thereto."

Mr. Chase did not think the substitute could be adopted and therefore did not think it worth while to spend much time in debating it, but he could not agree with the mover that we should borrow all our lessons upon this subject from New York, a state whose circumstances were so unlike our own. The state of New York was overflowing with wealth. They had an abundance of capital which was seeking investment and could engage in extensive enterprises without embarrassment. He thought it would be more wise for us to borrow a few lessons from Illinois and Michigan upon this sub-

ject. Gentlemen contended that there was no danger because no work of the kind could be undertaken unless the people wanted it. The same was true of Michigan. They could not have engaged in their ruinous projects if the people had not been in favor of it. But they got up three grand schemes of internal improvements at the same time and for different portions of the state; and the local interests thus created carried the whole of them and plunged the state into an enormous debt.

Mr. Sanders said a few words in reply, insisting upon the impropriety of tying the hands of the people so that they could in no event bring the resources of the state to the aid of any work of the kind, however important it might be.

Mr. Larrabee moved to amend the substitute by adding the following proviso: "*Provided*, That $150,000 of said debt shall be applied to improve the harbor of Racine and $150,000 to make a canal from Lake Horicon to Lake Winnebago."

Mr. Larrabee spoke in opposition to the substitute of the gentleman from Racine and maintained that submitting propositions of the kind to vote of the people was no safeguard at all. He alluded to the state of Mississippi, when under the same provisions as were contained in the substitute the state had contracted a debt of $7,000,000 and what was worse, it was afterwards repudiated. He considered the question as one of principle—whether the state should under any circumstances engage in works of internal improvement—whether that was the best way to secure such objects—and not a question as to how and under what restrictions the state should engage in them. It was clear to his mind that our only safety consisted in prohibiting the state absolutely from engaging in any work of the kind, except so far as the agency of the state might be necessary in carrying out the objects of special grants or donations for such purposes. He was not certain but the article as reported by the committee might embarrass the action of the state with reference to the grant of land made by Congress for the improvement of the Fox and Wisconsin rivers. He had understood that the honorable President, who was in Congress at the time the grant was made, would attend to that matter and see that the article was so adjusted that it would not prevent the state from accepting of the grant. He had intended to have examined the question himself but had not found time. It was a matter in which he felt much

interest and one in which all the northern counties were very deeply interested, and if there was any doubt about it, he hoped the article would be passed over until the question could be investigated.

Mr. Beall moved that the further consideration of said article be postponed until tomorrow morning, which was agreed to.

No. 13, article on acceptance of act of Congress, was then taken up, when Mr. Rountree moved to lay the same upon the table, which was agreed to.

The convention then resolved itself into committee of the whole for the consideration of No. 14, article on legislative, Mr. Whiton in the chair.

The article entitled "Legislative" being before the committee, Mr. Chase moved to strike out the fifteenth section, exempting members from arrest. Mr. Chase thought there might have been a time in the remote ages of the past when such provisions were necessary, but that at the present day they would wholly superfluous. Mr. Estabrook moved to amend the amendment so as to strike out that part of it which privileged members of the legislature from civil actions. At the suggestion of the chairman, Mr. Estabrook withdrew his amendment for the purpose of taking the question on the motion to strike out, which motion was then put and decided in the negative. Mr. Estabrook then renewed his motion to amend, which was also decided in the negative.

Mr. Wheeler moved to amend section 21 by striking out "$3.00" and inserting so as to fix the pay of members at $2.00 per day. The amendment was rejected.

Mr. Lovell moved to amend the thirteenth section so that the disqualification of persons holding commissions under the government of the United States for a seat in the legislature should not extend to postmasters. Mr. King hoped the amendment would not prevail. That point had been discussed in the committee, and the disqualification extended to postmasters with but two dissenting votes, in order to carry out a well-established maxim that no man could serve two masters. The amendment was rejected.

Mr. Chase moved to amend the seventeenth section relating to the style of enactment so that it would read "Be it enacted by the legislature of the state of Wisconsin," instead of "The people of the state of Wisconsin, represented in senate and assembly," etc.

Mr. Lovell referred to another section which provided that the two houses of the legislature should be called "senate" and "assembly" and remarked that the terms used in the enacting clause

should conform to the titles of the two houses. He was in favor, moreover, of recognizing in the enacting clause the authority of the people—that the people, in fact, enacted the laws. Mr. Chase said that that was the very thing that he objected to. The enacting clause as it stood in the section would declare that the people enacted so and so, which was not true; it was the legislature which enacted the laws, and oftentimes they enacted laws which the people did not want and which they should not be charged with having enacted. The amendment was rejected.

Mr. Kilbourn moved to amend the fourth section so as to require that the districts should be as compact as possible, containing the requisite population. The amendment was adopted.

The committee then rose and by their chairman reported the same back to the convention with amendments, when on motion of Mr. Chase the convention adjourned.

THURSDAY, JANUARY 6, 1848

Prayer by the Rev. Mr. Penman.

The journal of yesterday was read.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 11, article on eminent domain and property of the state.

Mr. A. G. Cole introduced the following resolution. And the rules having first been suspended for that purpose, the said resolution was adopted, to wit: "*Resolved*, That the sergeant at arms, doorkeeper, [fireman], and messengers be and they are hereby allowed $2.50 per day for their services during the session of this convention."

Resolutions were introduced and read as follows, to wit:

By Mr. Gifford: "*Resolved*, That this convention, before it adjourns, shall fix a day certain when the electors of this territory shall vote for the adoption or rejection of this constitution. Such day, so fixed, shall not be within ten days of any election of any town or county in this territory."

By Mr. Latham: "*Resolved*, That the committee on expenses be directed to ascertain and report to the convention as soon as practicable the amount of stationery which has been furnished for the use of this convention, giving distinctly the items of stationery furnished and the costs of the same."

Resolution No. 2, introduced by Mr. Kinne yesterday, was taken up, when Mr. Kinne asked leave to withdraw the same. Leave was granted.

Resolution No. 3, introduced by Mr. Scagel yesterday, was then taken up, when Mr. Lovell moved to amend the same by striking out the word "officers" and inserting the words "secretaries and assistant secretaries," which was agreed to. The resolution as amended was then adopted.

Resolution No. 4, introduced by Mr. Larrabee yesterday, was then taken up.

Mr. Larrabee said that perhaps it was proper that he should state the reasons by which he was governed in offering the resolution. This resolution had reference chiefly to the manner in which this printing was authorized to be done. He was willing that the debates should be published but he did not conceive that the convention was authorized by law to publish the speeches of the members at the expense of the people. He had been shown several proof sheets of the debates and journal as they were being printed and was very much pleased with the manner in which the work was got up and executed. He was willing to pay out of his own pocket his proportion of the expense of the work. He was informed that the share of each member would not be large.

Mr. King agreed with the gentleman from Dodge (Mr. Larrabee) in so far as to think that members who had long speeches published in full should pay for them out of their own pockets. He understood the intention of the printers to be merely to publish a

sketch of the debates. These would, in his opinion, form a part of the history of the convention.

Mr. Kilbourn thought the action proposed by Mr. Larrabee's resolution was premature. The proposition for taking action on the subject would be towards the close of the convention, and then with the inquiry contained in the resolution now offered should be coupled another, and that was as to the expense of the journal of the last convention. This matter of expense could not be ascertained until near the close of the session. If the gentleman would agree to lay the resolution on the table, he would undertake to bring up one such as he proposed at the proper time.

Mr. Lakin moved to amend the same by adding the words "in proportion to the amount perpetrated by each member severally."

Mr. Estabrook regretted that this question was agitated again. He regarded the remarks and debates on this floor as being as much a part of his property as were the resolutions and reports. They were a part of the proceedings and a part of the property of the state in which every individual possessed an interest. It was with no ordinary regret that he had heard several members of this convention, men of talents and abilities, request their remarks to be suppressed in the reports. He felt as if by so doing they were taking from him and his posterity something to which he was entitled. He was aware that in taking that course those gentlemen went on the ground that the convention was not authorized to make any appropriation for printing the debates. This ground he thought was untenable. There was no doubt as to their authority to order incidental printing; and this he regarded as coming under that head. The printed debates would form the index and the only index of the true signification of what was here enacted. He would give an illustration of his view that the printed reports of debates would give the clue and the only clue to the meaning of their proceedings: It was well known to gentlemen here that when the Constitution of the United States was under discussion, the question of bank or no bank was a leading and important one. The officers of General Washington's cabinet were called upon to give their opinions on the matter. Mr. Jefferson wrote against it, and in his writings he referred to the debates in Congress to prove his position, that Congress had rejected as a means what it sought as an end. A similar

use might hereafter be made of the debates on this floor. There might and probably would be ambiguous clauses in this constitution; and the reports of the debates might be the only means for courts of justice to arrive at the proper interpretation of them. He considered the expense of publishing these sketches of debates as reasonable a charge as any made by the convention, and he would as soon dispense with the publication of the journal as of these reports.

Mr. Beall made some remarks. Mr. Vanderpoel was in favor of the resolution offered by Mr. Larrabee but would be still better pleased if the amendment of Mr. Lakin should prevail. There seemed to be a strenuous effort on the part of some gentlemen on this floor to introduce long speeches into the sketch of debates that was to be published, and he thought that those who made long speeches should pay for their publication.

The question was taken on Mr. Lakin's amendment and it was adopted.

Mr. Beall moved to amend the resolution by substituting the following: "*Resolved*, That the resolution heretofore adopted on the subject of printing [the journal and sketches of debates] be and is hereby rescinded.

"*Resolved*, That Messrs. Tenney, Smith and Holt be paid a reasonable compensation for the printing of the journal already executed by them.

"*Resolved*, That the daily slips be hereafter discontinued, and Messrs. Tenney, Smith and Holt be paid a reasonable compensation for those already furnished the convention."

Mr. Chase moved that the resolution and amendment be laid on the table. And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 34, negative 33; for the vote see Appendix I, roll call 60].

Resolution No. 5, introduced by Mr. Foot yesterday, was then taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

Resolution No. 7, introduced by Mr. Fenton yesterday, was then taken up.

Mr. Fenton said that when he introduced it he did so in good faith and under the impression that the business of the convention could be concluded at the time specified; but if the question of printing was to be discussed every morning, the convention could never get through their labors.

On motion of Mr. Fenton the resolution was laid upon the table.

No. 9, article on eminent domain and property of the state, was then taken up. Mr. Whiton moved to lay the same upon the table, which was agreed to.

No. 12, article on internal improvements, was taken up, when Mr. Fox moved to recommit the article to the committee of the whole, which was agreed to.

No. 14, article on legislative, was then taken up. And the question being on concurring in the amendments of the committee of the whole, Mr. Lovell called for a division of the question. The question was then put upon concurring in the first amendment, which was to amend the second section by striking out the word "eighty" and inserting in lieu thereof the words "one hundred," and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 36, negative 31; for the vote see Appendix I, roll call 61].

The question was then put upon concurring in the second amendment, which was to amend the second section by striking out the word "forty-five" and inserting in lieu thereof the word "fifty-four."

Mr. Kennedy inquired whether, if the convention concurred in the amendment, it would be in order to propose another number. The President said that it would not.

Mr. Kennedy then moved to amend the amendment by striking out the word "fifty-four" and inserting in lieu thereof the word "sixty."

Mr. Lovell said that in fixing the minimum it must be recollected that they did not declare that the first legislature should consist of the minimum number. He thought it but right by fixing a low minimum to give the people an opportunity of having a small legislature if they chose.

Mr. Chase thought that the gentleman's argument would have applied very well to the propriety of a high maximum. He had no objection that the range should be a wide one, but he was in favor of a large legislature and should therefore go for a high minimum and a high maximum.

The question was then put upon the adoption of the same, and was decided in the negative. And the ayes and noes having been called and ordered, those who voted in the affirmative were [affirmative 30, negative 39; for the vote see Appendix I, roll call 62].

Mr. Bishop moved to amend the amendment by striking out the word "fifty-four" and inserting in lieu thereof the word "fifty-eight." And the question having been put upon the adoption of the same, it was decided in the negative. And a division having been called for, there were 27 in the affirmative and 33 in the negative.

Mr. Reed moved to amend the amendment by striking out the word "fifty-four" and inserting in lieu thereof the word "fifty-six."

Mr. Richardson said that he was utterly opposed to providing for a large legislature unless the per diem was diminished.

Mr. Reed hoped that gentlemen would look at this question with a view to the interests of the north as well as other sections. It was impossible that the northern counties could be properly represented without a large legislature. The northern counties were as yet but thinly peopled and they could not have a fair representation in the legislature unless the ratio was brought down to about six thousand.

Mr. Richardson was aware that the proposed amendment would leave a very wide range but he believed that the members of the legislature would very soon run up to the maximum. If the maximum continued to be one hundred, that would soon be the number of the legislature, and that number with a per diem pay of $3.00 would be too great an expense for the state. If members would fix the pay of the legislature at $1.50 per day, he was willing to vote for a high minimum and a large legislature. Grant County could send men to the legislature—and able men, too—who were willing to work for $1.50 per day.

Mr. King thought that the gentleman from Winnebago (Mr. Reed) was laboring under a false impression as regarded the matter under discussion. It was not attempted to fix the number of the legislature at fifty-four but to fix that number as the lowest limit. He was in favor of giving the people a wide range, but in voting as he had done for forty-five as the minimum he did not wish to be understood as desiring to limit the legislature to that number.

Mr. Chase said that the gentleman from Grant (Mr. Richardson) was perfectly right in supposing that the legislature would probably run up to the maximum number. For that very reason he had voted for a high maximum, believing as he did that a large legislature was a safeguard to the liberties of the people.

Mr. Reed thought that if the minimum should be fixed at a low number, it would be generally supposed that the convention intended to limit the first legislature to that number. If it was true that the legislature would probably soon run up to the maximum, that was no argument in favor of a low minimum.

Mr. Lovell said that it was a mistake to suppose that it was the uniform practice of state legislatures to increase their numbers. The New England states had decreased, instead of increasing, the number of the members of their legislatures. That was especially the case with Massachusetts. If members referred to their western

experience they would find that the legislature of the state of Illinois consisted originally of 130 members; but the recent convention held in that state had fixed the number much lower. The people found large legislatures too expensive, and after having tried them were not generally in favor of them. In answer to the argument of the gentleman from Winnebago (Mr. Reed) that the interests of the northern counties required a large legislature and a low ratio of representation, he said that gentlemen must recollect the rapidity with which these counties were being settled. Two years hence every county at the north will at the present rate of increase be entitled by its population to representation in the legislature.

The question was then put upon the adoption of the same, and was decided in the negative. And a division having been called for, there were 30 in the affirmative and 32 in the negative.

The question was then put upon concurring in the amendment of the committee, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 37, negative 30; for the vote see Appendix I, roll call 63].

The question was then put upon concurring in the third amendment of the committee, which was: "Add to section 4: 'said district to be bounded by county, town, or ward lines, to consist of contiguous territory and be in as compact a form as can be, to include the requisite population.'"

Mr. Wheeler moved to amend the amendment as follows: "Strike out the word 'single' in the first line of section 4 and add the following proviso at the end of the section: '*Providing*, however, That the districts shall be bounded by county lines until otherwise provided by law.'"

Mr. Chase took this occasion to declare that he was in favor of the single district system to the utmost extent, but that he was disposed to go for this amendment because he thought it impossible, before the first legislature, to district the state otherwise than by county lines. There was no authority vested in the convention to direct territorial officers to do it. Mr. King thought there would be no difficulty in doing this. The convention had the census returns by towns and precincts from every county with the exception of one small one. With these data they could district the state themselves.

Mr. O. Cole said that he hoped the convention would not lend their sanction to this amendment. If any principle was purely democratic, the single district system was so. It brought the representative immediately home to his constituents.

Mr. Richardson was unable to say what the wishes of his constituents were on this subject. His own views of expediency would rather lead him to go for the county system. But if he believed that his constituents required it, he was willing for his own part to undertake the arduous task of districting by the convention.

Mr. Beall made some remarks in opposition to the amendment.

Mr. Chase thought that the convention would find much more difficulty in districting than they supposed. He did not think it the province of the convention, but rather of the supervisors of the counties. He desired that the gentleman would modify his amendment so as to make it the duty of the first legislature to take steps for this purpose.

Mr. Doran said that he had written to his constituents in reference to the subject of single districts, and as far as he had received answers, they were unanimously in favor of that system. It would be much more difficult for the legislature or for the county boards to district the state than it would be for the convention. This was the proper time and place. He was in favor of the single district system in its strictest sense, now and hereafter.

Mr. Judd made a few remarks in favor of districting by the convention.

Mr. Scagel said that his constituents were in favor of single districts and of districting immediately. As regarded the eastern part of the territory, no difficulty would arise from doing so. With respect to the northern, he was without information. But there were gentlemen here from all parts of the territory who could speak in reference to those portions with which they were acquainted. Mr. Fox said that the gentleman from Waukesha seemed to think that all the members were prepared to act on this matter. He for one was not; and he did not wish to be left here until corn planting time agitating the subject.

Mr. Harvey was in favor of taking the matter up in convention. He thought the first legislature would have quite as much difficulty in districting as the convention would have and did not like the principle of leaving another body to do what they would shirk out of. He related an anecdote illustrating the feelings of citizens in regard to sending measures back from the convention to the people.

The question was then put upon the adoption of the same, and was decided in the negative. And the ayes and noes having been called for and ordered,

those who voted in the affirmative were [affirmative 8, negative 57; for the vote see Appendix I, roll call 64].

The third amendment of the committee was then concurred in.

Mr. Prentiss moved to amend the article by striking out section 5 and inserting the following: "The senators shall be chosen for two years on the day of the general election and in the same manner as members of the assembly are required to be chosen. They shall be chosen by single districts and at the first session of the legislature they shall be divided by lot into two equal classes; the seats of the senators of the first class shall be vacated at the expiration of the first year and the second class at the expiration of the second year, so that one-half thereof shall be chosen annually thereafter."

In support of this amendment Mr. Prentiss said section 5 provided that senators should be chosen by double districts. He was in favor of the single district system and believed it to be the most correct. By that system representatives knew their constituents, and constituents their representatives. His amendment modified the article only by making the senatorial districts single. One-half of the senate would be elected annually, so that one-half would consist of old and one-half of new members.

Mr. Whiton moved to amend the amendment by substituting the following: "Amend by striking out section 5 and inserting: 'Section 5. The senators shall be chosen annually by single districts of convenient contiguous territory at the same time and in the same manner as members of the assembly are required to be chosen; and no assembly district shall be divided in the formation of a senate district.' "

Mr. Lovell said that the objection of constructing the section as it was in the article was for the purpose of leaving at least one-half of one branch of the legislature acquainted with the forms of business, so as to give information such as could be handed down only by tradition to the new members. This was well known to be extremely desirable. He was opposed to the amendment of the gentleman from Jefferson, inasmuch as its necessary results would be that one half of the people would be called upon to vote for senators one year, and the other half the next. He thought that if the senatorial apportionment were made by single districts it could not be made by any means so accurately as by double. Great injustice would then be done to many counties.

Pending the question thereon, Mr. Fitzgerald moved that the convention take a recess until half past two o'clock, which was agreed to.

HALF PAST TWO O'CLOCK P.M.

No. 14, article on legislative, was then taken up, when Mr. Whiton by leave withdrew his amendment. Mr. Chase renewed the same.

Mr. Kilbourn said that he was opposed to the amendment for many reasons, one or two of which he would now state. The gentleman from Rock, considering the proposition he had in hand, had made out a very good case. He had preached democracy to Democrats; and perhaps they might profit by his preaching. But there was such a thing as carrying principles in the name of democracy too far. He argued that by the adoption of his amendment the legislature would be as stable as public sentiment was. This might be democratic doctrine, but he (Mr. Kilbourn) did not consider it such. It was important so to establish the branches of government that they should not be liable to be acted upon by sudden excitements. With a view to this principle the senate had been placed on the footing that it was in the article before the convention, a portion of the power of government being from year to year continued in existence. The object of having two houses was that one might act as a check upon the other. If both were elected annually, this object would be in a great measure defeated, for both would be acted upon by the same principles. If the gentleman from Rock went for the broadest democratic principle, let him go for but one house, and that a very large one. He himself did not believe this to be a correct principle to be incorporated into the constitution.

There had been a strife between the two political parties to see which would go the furthest in carrying out democratic principles. When the subject of universal suffrage was first introduced into the territorial legislature, it came from the west and from the Whigs. Perhaps the members of that party in the convention were now taking the same course and endeavoring to show that they were more democratic than the Democrats themselves.

As regarded the matter of progression, he thought that whenever material defects in our institutions were clearly shown they should be remedied. If they could not be clearly shown, it was better to adhere to old principles. The principle applied to the election of senators in the original article had been tried and was found to work well. It was a good principle in such cases to let well enough alone.

Mr. Chase called the attention of the convention on this subject to the consideration of its practicability. How would the double district system operate in the city and county of Milwaukee? Milwaukee City, having a vast preponderance of population, would probably always have the two senators. In the county of Racine, Southport would always have one and Racine one. In his own portion of the country five or six sparsely settled counties would be included in one district. One county more fully settled than the other would always have the senator. He did not think the operation of the principle would be fair or just. He was in favor of annual elections and single districts.

Mr. Prentiss said that it had been objected to his amendment that only half the people would vote for senators each year. That was very true. So in the Senate of the United States, only part of the states elect Senators each year. The objection amounted to nothing. What would be the operation of the article without the amendment? The gentleman from Racine (Mr. Lovell) thought that it would operate to retain county lines. If he will examine, he will find that it produces a contrary effect. The minimum of the house of representatives being fifty-four, and the senate consisting of one-third of that number, that body would consist at the minimum of eighteen members. On the double district system, that would divide the whole state into nine senate districts, each of which must contain one-ninth of the population—say 23,000 or 24,000 inhabitants. Now there was only one county in the state which contained that number. Dane County could not come in as a senate district, nor could Racine, nor Rock, nor Walworth, nor Waukesha, nor Jefferson, nor Washington; Milwaukee alone could—not because it contained the entire ratio, but because it came very near to it. Two or more counties must be united if we retained the double district system. At the north a number must be united. In order to preserve county lines the single district system must be adopted, and if that system was a correct one it should be adopted wholly.

Mr. Kilbourn did not know on what basis the gentleman from Jefferson had made his estimate. If the number of the house of representatives was taken at sixty, the senate would be twenty, and that would be found to produce a different result. If the single district system was adopted at all, it applied as strongly to one house as to the other. His objection to the proposition of the gentleman

from Rock was to the term of office, not to the system of single districts.

Mr. Jackson said that it was a strong objection to the proposition in his mind, that only one-half of the people could vote for senators in any one year. He did not object to shortening the term of senators. The veto power was a sufficient safeguard against improper legislation.

Mr. Whiton made some remarks.

Mr. Lovell said that the proposition of the gentleman from Jefferson was particularly objectionable in this, that it allowed only one-half of the people to vote for senators in any one year. Much had been said about the popular branch of the legislature. If there was any difference, the senate would be the more popular branch of the two. For the members of the house were chosen to represent sectional interests. The senators were elected for no such purposes, but to act as a check upon the house. The senate being chosen from large districts was more likely to represent the views of a majority of the people. After all this cry about democracy, the true democratic principle was to provide a stable government to represent the people. The only method for that government to be established was in a representative form, with two houses. The senate made the body stable—the house of representatives protected local interests. There was no middle ground to constitute a senate upon.

Mr. Kinne thought this was a question upon which it was not proper to refer to party distinctions. The people of the territory were generally in favor of the single district system, if it could be adopted. It was objected that a just division by the convention would be impracticable. He did not believe that, yet thought it might be difficult. He was inclined to think the article as reported from the committee far preferable to the amendments proposed. As to the objection made to the proposition of the gentleman from Jefferson—that only half of the people could vote in any one year—he did not regard it as important, for though only half could vote, all would be represented. He did not know that it was an object to vote for officers every year, but it certainly was essential to be constantly represented. He did not know that the convention were to be instructed in the Democratic creed by the gentleman from Rock (Mr. Whiton). He did not follow such a light, though he believed the gentleman from Rock to be competent to afford counsel and instruction on other subjects. There was such a thing as carry-

ing democratic principles to the extreme; and this was productive of injury. It was proper to take a medium course between an unstable and too permanent a government. If any new principle should at any time be desired to be carried out by the people, if it was good for anything, it would stand the test of a delay of a year or two; and by that time the senate could be elected with a view to its adoption. It was unsafe to leave matters in such a position that an objectionable measure could be crowded through the senate in a single year.

Mr. Kinne said that he believed the Constitution of the United States was considered sufficiently democratic at the time of its adoption. It had received the approval of the father of Democracy, Thomas Jefferson. That Constitution provided for two houses, with a Senate, whose term of office was six years. If the argument of the gentleman from Rock was good for anything, it would apply with equal force to the very constitution they were now assembled to construct. Why not make that to exist but for a single year? When the sun had made another revolution, new views and notions might prevail. Why not have a new constitution annually? One of the great political lights by which the gentleman from Rock was guided was Daniel Webster. That eminent man had declared in the constitutional convention held in Massachusetts in 1821 that the only alternative in making a good legislature was to introduce a property qualification for electors of the senate or a longer term of office for senators.

Mr. Richardson remarked there had been a great deal said upon this subject. Gentlemen upon this floor seemed to be straining at a gnat, who a very short time since swallowed a camel. By almost a unanimous vote, but a short time since, they agreed to cut the whole state into small districts, to be represented by the members of the assembly; and they now seem to apprehend serious difficulties in arranging single districts for our senators. O consistency, thou art a jewel! As to the election of senators annually, it seemed to him that gentlemen are afraid to trust the people with the government of themselves. If our senators have been faithful we will reëlect them, and if they have been unfaithful, they should not be allowed to serve us longer. And as to the policy of retaining some members who were members the previous year, if this is necessary in the one branch, it is also necessary in both. The members of the house should not have to go to the senate for the information which can

be had only through tradition. Such democracy as gentlemen seem to possess by their course upon this subject he disclaimed.

Mr. Estabrook said at the first blush he had been inclined to favor the proposition as reported by the committee; but on examination of the census table and a little cool reflection, he was inclined to change his views. He came here prepared to go for single districts, but he was not so far instructed or committed that he could not consistently modify or vary his position. The proposition to elect the senate yearly, on the ground that public sentiment was liable to sudden and extreme changes, was merely plausible, but he believed unsound. It was at least a remote and improbable contingency.

On examining the census he believed the measure would be fraught with great inconvenience and would throw us back to the state of affairs which existed a few years ago when counties were so attached in districts as to lead to much difficulty. He had taken the census table and made an estimate of the number of counties that would be entitled to a senator each, allowing a ratio of 10,500 inhabitants. There were but ten such. Milwaukee would be entitled to two, Racine, Walworth, Rock, etc. to but one. By examining and ascertaining which would be entitled to the highest moiety, after such an apportionment, the county of Lafayette would be entitled to one, Racine one, Fond du Lac one, etc., their moieties being highest. He thought that by such a course a fair apportionment could be secured.

Mr. Judd made some remarks. Mr. Estabrook called upon gentlemen opposed to his proposition to point out its unfairness before they passed judgment on it. Mr. Judd replied. Mr. Estabrook insisted that if gentlemen were opposed they ought in justice give good and satisfactory reasons. Mr. Judd rejoined. Mr. Lovell would inquire of the gentleman from Walworth (Mr. Estabrook) if his proposition, if adopted, would give any representation in the senate to those counties whose population was less than four thousand. Mr. Estabrook replied that it would, that counties would be formed into districts, assigning to each its due representation.

The question was then put upon the adoption of the amendment, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 37, negative 28; for the vote see Appendix I, roll call 65].

The question then recurred upon the adoption of the amendment as amended, when Mr. Sanders called for a division of the question. And the

question was put first upon striking out section 5, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 46, negative 19; for the vote see Appendix I, roll call 66].

The question was then put upon inserting, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 41, negative 26; for the vote see Appendix I, roll call 67].

Mr. Kilbourn moved to amend section 1 by striking out the word "assembly" and inserting in lieu thereof the words "house of representatives."

He said he offered the amendment in order to perfect the article. The word "assembly" was not sufficiently specific. It applied more appropriately to both branches of the legislature, which were both usually designated as the "general assembly." The term "house of representatives" had a definite and significant meaning, which he thought was much more appropriate in order to preserve the symmetry and harmony of the article.

Mr. Estabrook asked if the senate, as the bill at present stood, was not in fact a part of the house of representatives. The action of the convention had already broken down all distinction between them, and he saw no propriety in now attempting to make any. It was customary in some states to designate the two bodies as the "upper and lower houses," but he thought a better term for the convention to adopt would be "the great house, and little house," in which case the word "assembly" would be as appropriate as any other.

Mr. King saw no good reason for making the alteration. The word "assembly" was shorter and quite as tasty to his mind as the amendment offered.

Mr. Judd made some remarks.

The amendment was disagreed to. And a division having been called for, there were 17 in the affirmative and 26 in the negative.

Mr. Chase moved to amend section 3 by inserting in the fifth line after the word "apportion" the words "and district," which was agreed to.

Mr. Jackson ["A. G. Cole" in MS] moved to amend section 21 by striking out "$3.00" after the word "services" and inserting in lieu thereof "$2.00."

Mr. Chase called for a division of the question. The question was first put upon striking out, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 46, negative 21; for the vote see Appendix I, roll call 68].

Mr. Kilbourn suggested that it would be preferable to fix a maximum and minimum—for instance, that the sum should never exceed $3.00 per day nor be less than $2.00, leaving it to the legislature to regulate the sum within the prescribed limits. Mr. Estabrook expressed himself in favor of the amendment. He thought that circumstances might arise which would render it desirable either to raise or to reduce the per diem of members and that the precise sum should not be fixed and incapable of alteration. Mr. Lovell suggested that the proposition had better be so altered as to provide that the legislature should be prohibited from increasing their own pay. Mr. Chase was decidedly in favor of fixing the sum permanently in the constitution, so that all contention on the subject would hereafter be avoided. Mr. Sanders would go for the proposition if the gentleman from Milwaukee would strike out that part relating to a minimum price. He thought that there was but little danger of cutting down salaries in these days. It was better to fix the maximum sum and there leave it.

The proposition was not acted upon.

Mr. A. G. Cole moved to fill the blank by inserting "$2.50." And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 40, negative 27; for the vote see Appendix I, roll call 69].

Mr. Judd moved to amend the article by inserting the following to be numbered as section 25: "The legislature shall provide by law that all stationery required for the use of the state and all printing authorized and required by them to be done for their use and for the state shall be let by contract to the lowest bidder; but the legislature may establish a maximum price. No member of the legislature or other state officer shall be interested either directly or indirectly in any such contract."

Mr. Lovell suggested that if such a proposition was to be incorporated it should be so framed as to provide for every emergency which could arise. It might happen that the legislature could get no bidder. What then could they do? Must they adjourn? He appealed to the convention to decide if it was not far better to leave it to the legislature in such a case to provide a way by employing a printer and paying him for his work.

The question was then put upon the adoption of the same, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 46, negative 21; for the vote see Appendix I, roll call 70].

Mr. Kilbourn moved to amend section 4 by striking out the words "on the day of the general election" and inserting "the second Tuesday in October."

He said no provision had yet been made fixing a day for the general election. It was customary in most state constitutions to have the time specified, and he believed that the day proposed would prove more generally satisfactory than any other. It was a time when the farming portion of community were not busy and could easily attend the polls, and, withal, in this climate, generally a season of very fine weather.

Mr. Whiton made some remarks.

Mr. Kennedy asked the gentleman from Milwaukee to modify his motion. He said he came from a lumbering region, and when the spring freshets came on most of the voting population went down the river, and they could not return in time to attend the election at so early a day. He trusted therefore the motion would not prevail. Mr. Larrabee also expressed himself in opposition to the amendment. He was satisfied that it was much better for the farming community that the day should be fixed later in the season. Mr. Chase was in favor of the time specified. When the questions pending were of much importance, there was little danger of the people not attending the elections; and taking the seasons generally, and the chances of bad weather, from delay, he felt satisfied that the day proposed was early enough.

Mr. A. G. Cole moved to amend the amendment by inserting "Tuesday succeeding the first Monday of November."

Mr. Lovell argued the propriety of the proposition at some length. Frequent elections he thought a hardship to the people, inasmuch as they were attended with great loss of time and expense. It was better to have them all held at the same time, thereby creating sufficient interest to insure a full vote. The two last constitutions framed in the Union, those of New York and Illinois, both contained a provision of this kind. He concurred fully in the opinion expressed, also that the time should be late in the season.

The amendment was agreed to.

The question was then put upon the adoption of the amendment as amended, and was decided in the affirmative.

Mr. O'Connor moved to amend the fourth section by striking out the words "single district." And the question having been put, it was decided in the

negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 6, negative 60; for the vote see Appendix I, roll call 71].

Mr. Doran moved to amend section 21 by adding the following: "But the legislature shall have no power to appropriate any money of the state to promote their own interests, pecuniarily, politically, or religiously, otherwise than as above provided." And the question having been put upon the adoption of the same, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 7, negative 59; for the vote see Appendix I, roll call 72].

Mr. Kilbourn moved to amend section 24 by striking out all after the word "lottery," which was disagreed to.

[Mr. Kilbourn thought a discretionary power to grant divorces was needed somewhere; and as courts could not exercise this power, he was for giving it to the legislature. He had seen many cases of divorce granted, but had never noticed any that had been improperly done and believed that 99 out of 100 were done on good grounds. Mr. Whiton opposed the amendment; he said legislatures frequently granted divorces on ex parte evidence or on no evidence at all. He related an instance of a man and wife who had lived together many years having been divorced without their knowledge or wish, upon the petition of various individuals, and that they felt constrained to get married over again. He said the courts by our law have discretionary power.—*Tri-Weekly Express,* Jan. 8, 1848.]

Mr. Chase moved to amend section 17 by striking out all after the word "be" in the first line to the word "enact" and inserting "It is enacted by the legislature of Wisconsin," which was disagreed to.

Mr. Estabrook moved to amend section 24 by adding "except for good cause, after both parties have had notice of such application, and an opportunity to be heard," which was disagreed to.

Mr. Secor moved to amend section 13 by striking out the words "United States" wherever they occur and inserting the words "postmasters excepted," which was disagreed to. Mr. Harrington moved to amend section 6 by striking out all after the word "represent" in the second line, which was disagreed to.

Mr. O'Connor moved to amend section 17 by striking out the enacting clause and inserting: "Be it enacted by the senate and house of representatives of the commonwealth of Wisconsin," which was disagreed to.

Mr. Sanders moved to strike out section 13, which was disagreed to.

The question was then put upon ordering the article to be engrossed and read a third time, and was decided in the affirmative.

On motion of Mr. Fitzgerald the convention adjourned.

FRIDAY, JANUARY 7, 1848

Prayer by the Rev. Mr. Read.

The journal of yesterday was read and corrected.

Mr. Doran moved to amend the journal of yesterday by striking therefrom the amendment made by him to section 21 of article on legislative.

In support of his motion he referred to the eighteenth rule, which provided that the rules of parliamentary practice comprised in Jefferson's *Manual* should govern the convention in all cases to which they are applicable and not inconsistent with these rules. He then referred to and read from Jefferson's *Manual* the practice which showed that where amendments are made to a question those amendments are not printed in the journals separated from the question, but only the question as finally agreed to by the house. The rule of entering in the journals only what the house has agreed to is founded on great prudence and good sense, as there may be many questions proposed which it may be improper to publish to the world in the form in which they were made. This was the practice under Jefferson's *Manual.* He was free to admit, what might be suggested, that the practice in Congress was different; but this practice was suggested by the fifth section of the first article of the Constitution of the United States, which provides that all questions, whenever the yeas and nays are desired by one-fifth of the members present, whether decided affirmatively or negatively, must be entered on the journals. But he contended this convention was not now practicing under the Constitution of the United States, but, as the rule referred to showed, agreeably to Jefferson's *Manual,* which showed quite a different practice. He apprehended some gentlemen might be opposed to the proposed amendment of the journal because it would establish a practice calculated to exclude from the journal popular suggestions not even intended to be adopted. If gentlemen, however, wished such a practice, they should have shaped their rules differently. He contended at some length that if the house should decide against this proposed amendment of the journal, the decision would be in direct violation of their adopted rules.

Mr. A. G. Cole said that he supposed the object of the journal was to form a history of the proceedings of the convention; he objected to the motion of Mr. Doran because he did not wish to admit

the principle of keeping out of the journal resolutions offered but not adopted.

Mr. Whiton spoke in opposition to the motion.

Mr. Sanders agreed with Mr. Cole that the journal was the property of the convention. If gentlemen wished to kill amendments by putting on ridiculous and farcical riders they must abide by the consequences.

Mr. Lovell inquired whether, if the motion of the gentleman from Milwaukee (Mr. Doran) should prevail, the whole matter would not appear on the journal of that day, making matters worse than they were. Mr. Chase said he should regret very much if the rules should permit the amendment to be stricken out. When he made a motion or offered a resolution, he should be sorry if it required a majority vote before it could go on the journal. He desired whatever he proposed to appear there, even if he should be the only member who voted in favor of it.

The motion was disagreed ["agreed" in MS] to.

Mr. Latham asked leave of absence for Messrs. Kinne and Gale. Leave was granted.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 10, article on finance.

Resolution No. 2, introduced by Mr. Gifford yesterday, was then taken up. Mr. Gifford moved to amend the same by substituting the following as a modification, viz.: "*Resolved,* That the committee on miscellaneous provisions inquire into the expediency of fixing a day when the constitution shall be submitted to the electors for their adoption or rejection. Such day not to be on the day of, or within ten days of, any other town or county election."

Mr. King moved to amend the resolution by striking out all after the word "rejection."

Mr. Chase thought that the gentleman from Milwaukee (Mr. King) did not understand the resolution as modified. It merely required the committee to inquire into the expediency of fixing a day as proposed.

Mr. Kilbourn said if there was any point in the resolution at all, it was at the close of it. Without the last part the resolution only required the committee to fix a day for voting on the constitution. No one in the convention could suppose that that body would adjourn without fixing some day for that purpose. The whole pith of the matter was whether or not the vote on the constitution should be taken within ten days of any general election. He thought the

vote certainly ought not to be taken on the same day with a general election. All who witnessed the proceedings of the last spring election must have seen the impropriety of having the question of the adoption of the constitution again decided at that time.

Mr. Judd made a few remarks.

Mr. Jackson moved to lay the resolution upon the table, which was disagreed to.

The question was then put upon the amendment of Mr. King, and was disagreed to.

The question was then put upon the adoption of the resolution as modified, and was decided in the affirmative.

Resolution No. 3, introduced by Mr. Latham yesterday, was then taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

No. 10, article on finance, was then taken up and read the third time.

Mr. Judd called the attention of the convention to a typographical error; the sections were incorrectly numbered. Mr. King said the gentleman from Dodge (Mr. Judd) was very good at finding printers' errors, but this was the first time he had ever heard of a typographical error in a written document. (The article had not been printed.)

The question was then put upon the passage of the same, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 53, negative 3; for the vote see Appendix I, roll call 73].

Mr. Larrabee by leave introduced the following resolution, to wit: "*Resolved*, That the state superintendent be directed to procure sufficient parchment upon which to engross the constitution."

Mr. Harvey said that he was informed that it would be very difficult to obtain parchment and that it could not be procured short of Buffalo. This would involve considerable unnecessary expense, disproportioned to any corresponding benefit. Mr. Larrabee said that the only object of the original resolution was to engross the constitution on as imperishable a substance as could be obtained. The requisite article he believed could be procured at Chicago and obtained in six days by mail. The cost under these circumstances would be very trifling. Mr. Featherstonhaugh said that he knew something about parchment, as he had at one time occasion to make use of it. A good article could be obtained for from twenty to

twenty-five cents a sheet, and it could be procured from New York at a trifling expense. Mr. Sanders said that it did not require engrossment on parchment to immortalize the old constitution, and it remained to be seen whether such means would be necessary to perpetuate this. Mr. Harvey stated that the superintendent of public property had estimated the expense of procuring parchment at one hundred dollars. Mr. Castleman had understood the superintendent to say that parchment could not be procured at Chicago, nor short of Buffalo. He presumed the expense of procuring it there would not be much; but the question was whether it could be procured in time, before the ajournment of the convention.

Mr. Larrabee had very little choice how the constitution should be engrossed. His only object in offering the resolution was to provide for carrying out the resolution previously offered by his colleague.

The question was then put upon the adoption of the same, and was decided in the negative.

Mr. Kennedy introduced the following resolution, which was read, to wit: "*Resolved*, That the committee on eminent domain and property of the state be instructed to inquire into the expediency of memorializing Congress for a grant of Fort Winnebago and the lands reserved for the use of the fort to the state for state prison purposes, said lands to be received as a part of the five hundred thousand acres to which this state will be entitled on her admission into the Union."

No. 11, article on eminent domain and property of the state, was then taken up. And the question having been put on the passage of the article, it was decided in the affirmative. And the ayes and noes having been required by the rules, those who voted in the affirmative were [affirmative 57, negative 2; for the vote see Appendix I, roll call 74].

No. 13, article on acceptance of the act of Congress, was then taken up. And the question having been put upon ordering the article to be engrossed and read a third time, it was decided in the affirmative.

The convention then resolved itself into committee of the whole for the consideration of No. 12, article on internal improvements, Mr. Beall in the chair.

Mr. Lovell offered as an amendment to strike out the first section and insert, to stand as section 3, the following: "The five hundred thousand acres of land granted by the United States for purposes of internal improvements or the avails thereof shall constitute a perpetual fund, and the interest thereof, together with the five per cent of the net proceeds of the sales of public lands granted by the United States for a like purpose, shall be annually appropri-

ated to the construction and repair of roads and bridges in the several counties of the state, in proportion to their population, under the direction of the board of supervisors thereof: *Provided,* That the legislature may at any time by law apply such interest and five per cent to other works of internal improvement; but no such law shall be valid unless it be for some single work or object and be so submitted to the people at the next general election after its passage and approved by a majority of the qualified electors voting at such election."

Mr. Lovell in support of his amendment said Congress had seen fit to offer to every state on coming into the Union a donation of five hundred thousand acres of land for purposes of internal improvement. The question raised was whether the fund so created should be applied to such purposes. He was decidedly in favor of making such application, both of that fund and of the one created by the donation of five per cent on the sales of the public lands within the state. In the first place, he would call the attention of the convention to the proposition which formed a part of the last constitution to give the funds created by the five hundred thousand acres of land and the five per cent on sales for the support of schools. He hoped no such appropriation would be made. He was in favor of supporting common schools and advancing the cause of education, but he was convinced that a large school fund was not always the best means of promoting education. In the state of Connecticut there was a magnificent school fund, and education was at a lower ebb there than in any of the surrounding states because the people, not being called upon to contribute to the support of schools, felt comparatively little interest in them.

He had inquired what would be the value of the fund provided for the support of schools in Wisconsin by the appropriation of the sixteenth section in every township to that purpose and he found that it would be equal to $1,000,000, giving an annual interest at seven per cent of $70,000. This was the school fund of only the settled part of the territory. If proper measures were taken in the sales, the fund could be raised to $2,000,000. A single school section in his own county was estimated to be worth between three and four hundred thousand dollars. It was not desirable to raise a fund which would support schools all the year round. He hoped a system would be adopted of raising a part of the sum necessary by tax. The five hundred thousand acres of land, if judiciously

selected, would be worth $1,000,000. This added to the value of the school sections would be $2,000,000. To this add the school section in the unsettled part of the territory and we have half a million more—in all two millions and a half of dollars—the interest of which would be $175,000 per annum. To this add the five per cent and we bring the sum total up to about $210,000, which would give to the county of Racine $19,000 annually for the support of common schools and to other counties in proportion. Did gentlemen consider this the most proper way to dispose of the funds arising from these donations? The sum of one dollar per head appropriated to the support of common schools in the county of Racine would be uselessly applied; at least one-half would actually be thrown away. It was his opinion that the fund of $1,000,000 arising from the school sections would be sufficient for the support of schools and would tend to make better common schools than a larger fund would. In support of this position he would adduce the example of the state of Rhode Island, which had no school fund and yet had the best common schools of any state in the Union. Massachusetts, too, had a small school fund, and her common schools were of high grade of excellence, while Connecticut, with her immense school fund, fell far behind either of the states just named in that particular.

The next subject of inquiry was whether this fund, made perpetual for purposes of internal improvement, would do any good if applied to the construction of roads and bridges in the several counties. The amount of land subject to assessment in Wisconsin in 1845 was 2,740,000 acres. In 1846 it was 3,227,000 acres and in 1847 it amounted to 4,028,000 acres. Thus it would be seen that from 500,000 to 1,000,000 acres of public land had been entered annually since 1845. Five per cent on the value of the average amount sold annually would amount to at least $40,000 per annum. Of this the county of Dane would receive $2,000 and other counties in the ratio of their proportion. He knew that the present was the era of railroads and quick transportation but believed that the more humble and old-fashioned means of transportation were more generally useful. There was nothing more important than to render these means of communication easy. The amount above estimated would in a few years very greatly increase. It may be objected that this estimate is too large—that the five per centum will soon

fail or fall to a nominal sum. Is this so? There are estimated to be 35,000,000 acres of land in Wisconsin. Of this, in June last 4,000,000 had been sold and assessed—call it 5,000,000 now. Estimate the reservation at 3,000,000 and there will remain to be sold 27,000,000 acres. The sale of 16,000,000 in twenty years would give $50,000 per year, leaving unsold 10,000,000 acres in 1868. But this estimate thus far was based only on the five per cent of the proceeds of the sales of the public lands. It might be fairly presumed that the five hundred thousand acres of land granted to the state would be sold in five years. If so, there would be an addition of at least $60,000 per annum, which, added to the income of $40,000 from the five per cent, would give $100,000 per annum to be appropriated to these purposes of improvement. This would give to Dane County $5,000 per annum and to other counties in proportion, so that in five years a proper application of the money would open avenues so that an access might be had to every part of the country. By this process of gradual improvement the fund could be made to do more good than by any other means.

The amount of taxable property now returned in the territory of Wisconsin amounted to between fourteen and fifteen millions of dollars. The increase from last year was about $3,000,000. In some of the counties several descriptions of property were not assessed. Probably in the amount of $14,000,000 one-third of the actual property was not included. Let the whole taxable property be estimated at $20,000,000. On this amount the state by a tax of one mill and seven-tenths on a dollar would raise the annual sum of $34,000. The state of Ohio for a number of years carried on her government with a less sum than that. We might estimate the average amount of taxable property for the next four years at $30,000,000, which would give $51,000 annually for the support of government and yield a surplus which could be applied annually to purposes of internal improvement.

Mr. Lovell said that he did not believe in the principle of tying up the state in such a manner as the first section provided, so as to disable it from ever undertaking internal improvements. He was in favor of the principle that the state should not go into debt for any such purpose, but did not believe that the people would be willing to say that they never should have any internal improvements. He willingly assented to the proposition that no one generation

should run the next into debt. But by the proposition he advocated we might carry on internal improvements and pay for them, year by year, by the appropriation to this purpose of the annual donation of the five per cent and the interest of the fund arising from the sale of the five hundred thousand acres of public land, together with any surplus arising from taxation beyond the wants of the government.

Mr. Harvey said he conceived it to be always delusive; and the remarks of the gentleman from Racine (Mr. Lovell) went to confirm the conviction, to take ex parte testimony on matters on which one was not previously well informed. The gentleman had drawn a contrast between the school systems of Massachusetts and Rhode Island and that of Connecticut, and assuming the practical workings of the first two states named to be vastly superior in efficiency and practical benefits to the people to that in the state last named, had drawn an inference against large school funds. He doubted the fairness and correctness of the testimony on which he understood the gentleman had been brought to the opinions he had just avowed. He was not prepared to concede that the common schools of Connecticut were as degenerate as the gentleman from Racine would lead the convention to believe. The common school system of that state had been the subject of frequent and highly wrought eulogy; and it was a fact universally acknowledged that the general education of the people of that state was worthy of emulation by her sister states. But conceding the justice of the contract drawn by the gentleman his deductions were unfair. He (Mr. Harvey) would take it upon himself to say that the acknowledged flourishing condition of common school education in Massachusetts and Rhode Island was owing chiefly to the active exertions of a few prominent individuals whose philanthropic labors had aroused a spirit among the people of those states which had supplied any deficiency in their school funds. From the small size and compact population of these states those individuals had a ready access to the public ear and were thus enabled to induce simultaneous interest and action on the part of the people through their representatives. It was possible, too, that the same wisdom had not directed the employment of the ample school funds of Connecticut as had matured and put in operation the systems of neighboring states whose school funds were supplied by the voluntary taxation of the people. The gentleman's hypothesis proved nothing more.

Mr. Harvey was of opinion that if dependence was placed entirely or chiefly upon direct taxation for the support of common schools in Wisconsin, it would be a long time before the state would have an efficient and beneficial system of public instruction. He believed that we wanted a liberal school fund, and was prepared to show that our necessities would require the largest fund that could be realized from all the resources of which we could avail ourselves for this object. Allowing one-fourth of the population of this territory as ascertained by the late census to be children and youth between the ages of five and sixteen, we have now rising 52,000 for whose education it is necessary for the state to make immediate provision. Admitting the value of the school sections in the settled portions of the territory to be, as estimated by the gentleman from Racine, $1,000,000—and in his opinion it would require a most prudent husbandry and a very wise disposition of our school lands to make them yield anything like that sum—and at seven per cent this would yield an annual revenue of but $70,000. The committee on education and school funds, of which he was a member, had not in any of the plans which had received favorable consideration at their frequent consultations contemplated providing a fund the revenues of which would afford the whole means of educating the children and youth of the state. On the contrary, they proposed to give the people a direct pecuniary interest in the support of their schools by calling upon them to contribute at least one-third of the amount required for their sustenance, by direct taxation. Two-thirds the expense of schooling 52,000 children and youth eight months in the year, taking the published statistics of the state of New York for our guide, would amount to $80,000—an excess of $10,000 beyond the entire anticipated revenues of the fund arising from the sale of the sixteenth sections in the settled portions of our territory. But this fund was not immediately available—and before it could be rendered available the population of the territory or future state would largely increase; and in that increase of population would be a corresponding increase of children to claim provision for their education in our school fund.

But in addition to the expense of supporting common schools it was wise to provide to sustain normal schools in which to educate teachers for the common schools. These were to a good system of common schools as the springs to the fountain. What better appropriation could be made of the revenues arising from the five per

cent and the sale of the five hundred thousand acres than to apply them, after supplying the deficiency of our common school fund, to this object and the foundation of libraries? Wisconsin required a complete system of popular education, full in all its departments.

He looked upon the plan proposed by the gentleman from Racine as a very dangerous one. It proposes to set aside the revenues arising from the sources named, for distribution among the several counties to be employed in the construction of roads and bridges and other works of internal improvement—in other words, to make these donations of Congress the basis of an internal improvement fund. The revenues thus accruing would be scattered over so wide a surface and pass so many and diverse agencies in their disbursement that they would be wasted and frittered away. The plan of the gentleman was a specious one, but its practical operation would be only to place this immense public treasure where it would be most likely to form a part of a system of political favoritism—to make this fund what men of the gentleman's political party were fond of calling the land distribution fund—a great bribery fund, to be used to favor the interests of party and politicians and fill the pockets of individuals without substantial benefit to the people at large. Ohio afforded an example of the folly of disposing of this bounty of Congress in the manner proposed. Education was the grand insurance policy of our liberties. Congress had once consented to our adding these donations to the school funds—and he thought it bad policy to divert them to any other channel, when we should need them here.

Mr. Chase said that he had almost been convinced by the remarks of the gentlemen from Racine and Rock that the convention was engaged in discussing the article on schools and school funds. At the proper time and place he hoped this question would be fully discussed. He concurred fully in the views expressed by the gentleman from Rock (Mr. Harvey). Meanwhile the proper subject before the convention was internal improvements. He had supposed that all the people of the territory had settled down in opposition to the principle of internal improvements. He could not imagine what had induced gentlemen to bring that subject forward here and to advocate it with so much zeal, unless they had imbibed largely that spirit of acquisitiveness which leads to the employment of disbursing agents with large salaries to superintend public works. The question was whether it was good policy to expend the funds

to which reference had been made, on internal improvements. He was confident that two-thirds of the people were opposed to every such propostion. He should at proper time move an amendment to the second section, striking out the word "particular," which would leave the subject where it should be. Then if the people should instruct their legislature to construct railroads, plank roads, or electric telegraphs between them and their constituents they could do so; but the expense must be defrayed solely out of the grant from Congress.

Mr. Root agreed with Mr. Chase that this was not the time to discuss the school question. He wished to call the attention of the convention to the argument of the gentleman from Racine, that large appropriations for the support of schools caused them to deteriorate. It was true that common school education in Connecticut was a little behind what it was in some other of the New England states; and it was owing to this fact that there was no proper supervision over them—no efficient board of education—no one to see the funds properly applied. Recently such a board was established, and no one doubted but that henceforth things would go on as they should. If the argument of the gentleman on this subject was correct, why was it not equally applicable to the construction of roads and bridges? If there was a public fund for their construction, would not the people become careless in working them and rely wholly on that fund? Would the roads be any the better for it? If the argument would operate in the one case, it would in the other. As this was not the proper time to discuss this subject, he would not pursue it further.

Mr. Kilbourn said that there seemed to be some difference of opinion as to the propriety of bringing up the subject of common schools at this time. He did not think it the proper time to discuss the system of education, but could see no impropriety in debating the question whether the fund in question should be withdrawn from the purpose proposed by the other convention. The proposition was to apply this fund to the purpose of internal improvement; and it was very proper to inquire into the subject. If there was any article in the old constitution which was acceptable to the people, it was par excellence that which appropriated this fund to purposes of education. It was said by many that if the old constitution contained no other good provision it ought to be adopted for that alone. He was in favor of retaining in substance the system

then presented. It ought not to admit of a difference of opinion that such a fund so appropriated would be a public benefit. A general system of education was the only system on which we could depend for the preservation of our liberties. He did not believe that the whole fund would be any too much for a general system of education, which should provide not only for common schools but for those of a higher order. At any rate it would require a very large sum to educate not only the children now here but those to come hereafter. He thought that the gentleman from Racine overstated the amount that could probably be realized from the sale of school sections. If so, he believed the common schools would be insufficiently provided for from that source, and recourse should be had to the other fund.

The gentleman from Racine (Mr. Lovell) mistook his figures in estimating the value of the five hundred thousand acres of land at $1,000,000. It would not exceed the minimum of $1.25 per acre. Nevertheless, the fund arising from this source would be a considerable one, but he feared if applied in the manner proposed by the gentleman's amendment it would be frittered away as he had seen for thirty years of his life a fund in the state of Ohio wasted, which was derived from similar sources and appropriated in a similar way. When the fund was thus appropriated, it was left in the hands of a few persons who used it in their own way. There was no good system without rigid accountability. Some good might be derived from it, but none which the public could appreciate. Suppose the people should determine to have a railroad from Lake Michigan to the Mississippi and that the points of termini were decided on. One million of dollars ought to be expended on the work during the first year, and the whole ought to be constructed in three years. Yet, according to the system of the gentleman from Racine, it would require twenty years to construct such a railroad. The sum would be inadequate for the object. A better system would be to induce capitalists to come here by giving them such rights and privileges as would make it an object to employ their capital in railroads. He looked upon the whole system as proposed by the gentleman from Racine as entirely idle and calculated to retard rather than to promote any system of internal improvement.

Mr. Estabrook thought the proposition of the gentleman from Racine premature. As chairman of the committee on education, it was proper that he should make an apology for the delay in present-

ing the report of that committee. He would assure the convention that the committee had not been idle. In the old constitution the article in reference to schools had been as the precious jewel in the head of the toad. Before making any change in it the committee had thought it right to pause. He did not intend to forestall the report of the committee which would probably be made on Monday next.

Mr. Jackson said he did not rise to discuss the merits of the question before the committee, but to allude to the remark of his colleague (Mr. Lovell) that education was at a lower ebb in Connecticut than in the surrounding states; and this he thinks is in consequence of her large school fund. Connecticut had some of the oldest and best colleges and seminaries of learning this side the Atlantic. She had raised some of the ripest scholars and men in science in America; nor was her literature confined to the aristocracy, but her system of education diffused intelligence among the masses. He was proud to say he was a son of that little Yankee state. In point of intelligence her people were not behind those of her sister states. If the gentleman would look at the last census of the United States he would learn the fact that in proportion of her population Connecticut had fewer adult persons who could not read or write than any other state in this Union.

Mr. McDowell said that he had not supposed men could be found in the nineteenth century so unfortunate as to make an attempt to divert the school fund out of its channel. He would tell gentlemen who should make such an attempt that it would meet with the severe disapprobation of the people. Such an attempt would be futile and abortive. The subject came more directly home to the people than did any other.

Mr. Vanderpoel thought it proper to call the attention of the convention to some facts which had not yet been referred to. He thought the principle of education the most proper species of internal improvement. As regarded the proposition of Mr. Lovell, it was an illustration of the fact that what was beautiful in theory could not always be reduced to practice. There were errors in his statement; everything was overrated. He had stated, and justly, that on coming into the Union we should be entitled to 500,000 acres of land. Had there not already been a heavy draft on this fund? Had not constitution making made such a draft? And would it not make a further one? The fund would not be too large for purposes

of education. If the school sections should bring $1,000,000, the interest of that would be only $70,000—a sum insufficient even now. (Mr. Vanderpoel here entered into some statistical details.) With these facts before us, said Mr. Vanderpoel, is it not evident that the increase of population will outstride the available resources of the education fund? The people look with much more interest to this subject than to that of internal improvements. When the proper time comes, and the resources of the country demand internal improvements, capitalists can be found without difficulty to make the necessary investments to carry them on.

Mr. Judd made some remarks.

The committee then rose, and by their chairman reported progress thereon and asked leave to sit again. Leave was granted.

The President announced the appointment of the following persons on the committee under the resolution introduced by Mr. Scagel on the fifth instant, to wit: Messrs. Scagel, King, and Beal.

On motion of Mr. Doran the convention took a recess until half past two o'clock.

HALF PAST TWO O'CLOCK P.M.

Mr. Castleman said he wished to call the attention of the convention to a report of his remarks in the *Argus* of yesterday, purporting to have been made on Friday last. He was incorrectly reported and would furnish the reporter for that paper a verbatim copy of his remarks, that he might correct the mistake if he wished to do so. And he would now ask as a matter of right that nothing which he might hereafter say on the floor should be published in the sketch of debates (and he would also ask as a matter of courtesy that his remarks should not be reported for the public papers) without his supervision. He would not charge the reporter of the *Argus* with willfully or even carelessly misrepresenting him. On the contrary, he believed that he (the reporter) made every effort to do justice to members, but in the hurry and confusion of debate it was often impossible to do so, and a single word dropped or transposed would often change the meaning of a whole paragraph and place a member in a very different position from that which he really occupied.*

*For report as corrected, see page 395.

Mr. Scagel, from the committee to whom was referred a resolution of the convention relative to the compensation of the secretaries of the convention, made the following report, to wit:

"The committee to whom was referred the resolution relative to the payment of the secretary and assistant secretaries recommend the adoption of the following resolution: '*Resolved*, That the secretary be allowed five dollars per day and the assistant secretaries four dollars per day for their services during the sitting of this convention.'

GEORGE SCAGEL, Chairman"

Mr. Larkin ["Lakin" in MS] moved to amend the resolution by striking out the word "four" and inserting the word "five" after the word "secretaries."

Mr. Larkin explained. He believed the assistant should receive $5.00 per day as well as the chief secretary and saw no good reason for any distinction. Mr. Jackson thought there was a propriety in giving the secretary a larger compensation than the assistant. More skill and experience were required in him, and more responsibility was thrown upon him. He was opposed to the amendment. Mr. Doran remarked that the responsibility of the secretary was greater, but the greater part of the work always fell upon the assistant. He thought their compensation should be equal.

The report and amendment were agreed to.

Mr. Sanders moved that the convention go into committee of the whole on the article on internal improvements. Mr. Estabrook stated that Mr. Martin, who was particularly interested in that subject, was indisposed and wished that the subject might not be taken up at present. Mr. Sanders withdrew his motion.

The resolution as amended was then adopted.

Mr. Kilbourn moved that the committee on engrossment be discharged from the consideration of No. 13, article on acceptance of act of Congress, and that the said article be recommitted to committee of the whole.

He explained that there was some misapprehension existing. It was supposed by some that accepting the act of Congress unconditionally would preclude the adoption of any proposition for a modification of boundaries; and though he did not think such would be the effect, yet for the satisfaction of gentlemen who entertained this view of it, he thought it best to consider both subjects together and append the substance of the latter to the former article; and for this purpose he submitted the motion. Mr. Chase hoped the motion

would not prevail. He thought it was better to let it alone for the present. The committee on revision would dispose of it. The President had decided that it was within their power, and he thought it was their province. Mr. Kilbourn did not propose to amend but simply to incorporate the substance of the article accepting the act of Congress with the article on boundaries. The convention could do this as well as the committee on revision. He thought this would be a more satisfactory disposition of it.

The motion was agreed to.

The convention then resolved itself into committee of the whole for the consideration of No. 5, article on boundaries; No. 13, article on acceptance of [act of] Congress; No. 15, article on schedule and miscellaneous provisions, Mr. Estabrook in the chair.

The first section of the article on boundaries was read. Mr. Brownell offered the following amendment: "Strike out all after the word 'viz.' in the ninth line, section 1, and insert 'leaving the aforesaid boundary line at the headwaters of the Montreal River where the state line of Michigan first intersects the same; from thence, in a straight line southwesterly to a point a half-degree due north of the highest peak of Mountain Island on the Mississippi River; thence due south over said Mountain Island to the centre of the channel of the Mississippi River; thence down the centre of the channel of said river as prescribed in the aforesaid boundary.'"

Upon this amendment Mr. Brownell spoke as follows: I not only submit this amendment in compliance with the united wish of the people of my district, but I do it because I believe it proposes a boundary on the northwest in conformity with an equitable division of the territory into two states, and because it is one that conforms to a natural geographical division of the same.

This desire for a political separation from the new state arises from our great distance from the capital and from the fact that we are severed from the settled portions of Wisconsin by a wide, uninteresting, and unsettled region of country of some one hundred and fifty miles, which forms a reasonable barrier to a connection. We feel that we cannot enjoy the benefits and protection of so distant a government. The settlements on Black and Chippewa rivers and those on Lake Superior have scarce ever been represented; and in the neighborhood in which I live, though we have some two hundred inhabitants, there is not one civil officer; and this is the case

with several others. All must see that this state of things so disastrous to the prosperity of the settlements chiefly arises from our distant and neglected condition. And gentlemen will remember that the subject of equal representation and equal protection involves a principle which is peculiarly American.

Unlike the rest of Wisconsin, the great distinctive character of the country above this line consists in its being a low, flat country, immediately away from the streams or valleys, characterized by its pine barrens, lakes, tamarack swamps, and marshes; and I affirm it as my unqualified opinion that the great aggregate of the country will not pay the expense of surveying for ages to come. It was in a great measure on this account—on account of the uninteresting character of the country between Black and Chippewa rivers—a distance of some sixty miles—that the committee on boundary before the convention of last year proposed the same line. Thus, independent of its being a proper state division, it was thought to be appropriate on this account. It will be seen by reference to the map that this line would leave territory enough south of the British boundary and east of the Mississippi River to form a new state in coming time; and, although a large portion of it is unfit for use, yet, could the St. Croix settlement enjoy the advantage and protection of a government at home, it would tend to direct attention to the country and stimulate the settlement of the more interesting region north of it.

On the other hand, I am unable to see any real advantage that will accrue to Wisconsin by holding on to this strip of territory. Whether so large a state, equal to some five of New England, will not lose to Wisconsin a proper representation in the Senate of the United States—whether such feeble senatorial representation does not lose to the North a balance of power against the states of the South—and whether so great an extension of territory to the north does not hazard the removal of the seat of government from this place—and finally, whether such great distance does not subvert the very objects for which state governments are instituted, by rendering the benefits inconvenient and unequal, are all questions which must be answered in the affirmative. Then where the gain by this proposed large state government? Sure it is that it proposes a policy which will greatly retard the prosperity and settlement of the north.

Taking then the topography of the country, we have the only

true chart before us upon which is traced a natural channel for a boundary line, and this one incomparably better, we think, than any other that can be pointed out.

Mr. Beall inquired if by this amendment Wisconsin would not be cut off from the coast of Lake Superior. Mr. Brownell replied in the affirmative. Mr. Beall spoke in opposition to the amendment.

Mr. Featherstonhaugh inquired, if we cut ourselves off from the shore of Lake Superior, what is to be the condition and destiny of that northern territory. What is the ultimate purpose of the gentleman in regard to it? Mr. Brownell replied that the line he had proposed was desired by the people of the St. Croix country from a deep feeling of its necessity to their future welfare—the result of a thorough practical knowledge of the inconveniences of being connected politically with a country from which they were separated by nature. They were a people of different pursuits, interests, and feelings from the body of Wisconsin—they were not connected with it in business or in their social relations, being cut off from communication by the immense spaces of wilderness between. It was almost impossible for members from there to get down here in the winter. His proposition contemplated the erection of a separate state there hereafter. If the line were placed where he proposed, this would be done at no distant day. If, on the contrary, the line were made to include the St. Croix country in Wisconsin, that country was too far off ever to receive much benefit from legislation here; and it would be almost impossible ever to organize a government in the north. His sense of equity dictated that we should retain the whole or none of the north country, because, if we took all the present settled part, the rest might never be able to organize a government, or at least not for a century. If gentlemen felt sure that it was an advantage to have a great state, regardless of the diverse interests and heterogeneous materials of which it was composed, let them go for retaining the whole. He thought it was expedient that there should be a division, and if so, we should prepare for it. We should so adjust our boundaries as to leave to the new state what naturally and properly belonged to her.

Mr. Judd made some remarks.

Mr. Fenton inquired upon what authority the gentleman last up had said that the people of St. Croix desired to be set off from Wisconsin.

Mr. Judd made some remarks.

Mr. Fenton said a portion of the people were in favor of the line proposed by Mr. Holcombe and a portion were opposed to it. If the vote given upon the adoption or rejection of the defunct constitution by the people of St. Croix County was any test—and he believed it was—a majority of four votes only was given for the constitution and for that boundary. He was decidedly opposed to the line proposed by the gentleman from St. Croix. He did not believe this convention had a right to give away one foot of territory, and he firmly believed that the people of his district and of the whole mining region would never vote for a constitution which gave it away. Our northwestern boundary no one can dispute, except on the ground of the act of Congress authorizing us to become a state. But as the line fixed by that law pleases no one, the last convention altered it; and this convention has the same authority. The Ordinance of 1787 gives us to the British line; but as it is extremely doubtful whether Congress will admit us with that extreme line, Mr. Fenton thought it very bad policy to suffer the line to come farther east than a line from the mouth of Rum River to the foot of the rapids of the St. Louis River. Rum River itself is too small for a state line; but its mouth and the foot of the rapids on St. Louis River are points which cannot, like the Des Moines rapids, be mistaken. This line will secure to us the present population in that direction; it will divide no local interests; it will give us all that immense pine region (the best probably in the world); it will secure to us the splendid water power on our side of St. Anthony's Falls; and it leaves the valley and tributaries of the St. Croix entire, instead of cutting through them. And above all, it will secure to us the ground over which a railroad must soon be laid from the head of navigation on the Mississippi River to the head of navigation on the Great Lakes, where the two come within eighty miles of each other. The line fixed by the act of Congress and the old constitution and the one proposed by the gentleman from St. Croix, all cut this tract so that neither state could control the road, if made. But the line reported by the committee secures to Wisconsin the whole ground.

Mr. Brownell: I had not supposed the gentleman from Crawford came here to represent my district. That gentleman may represent the wishes of the people of Crawford County, but surely he does not represent those of the people of St. Croix, nor is he correct in the inferences drawn from the vote on the rejected constitution.

Now, I assume to know what the feeling there is with regard to this boundary line, and I assert that the old constitution received all its support from the fact that the great apprehension was that they might get a more [un?]favorable division of the territory should that fail to be adopted. If I was particularly instructed on any subject, it was on this. I have said that the country in question is of an indifferent character, much of it being constituted of pine barrens, lakes, marshes, and swamps. This is substantially true, and as furnishing some evidence of its character I will refer to the circumstance that the lumbering business has been established and extensively carried on in that settlement for more than ten years, and yet there is not so much as a "trail" leading to the country, and there is no telling when there will be one without an appropriation from the state to open it.

We wish to see an equitable division of the territory—one in conformity with the geography and local relations of the two districts; or we should prefer to see the whole of it embraced in the new state, as secured under the Ordinance of 1787. We wish not to see Wisconsin act upon so ungenerous a policy as to include the St. Croix valley to the exclusion of the more worthless region north of it. Adopt the line proposed, and the next state on the west side of the Mississippi River, following our example, will extend her jurisdiction from Iowa to the British line; and thus we shall have but two states out of a territory large enough for three. I would therefore respectfully ask gentlemen to pause before they adopt this policy and thereby inflict upon the little colony of St. Croix and the settlements on Lake Superior the burden of coming six hundred miles in the winter season to represent their interests.

Mr. Fenton said he would not designedly misrepresent St. Croix, but he was confident that though he did not reside there, he could represent the wishes of the people in that section as well as the gentleman from there had done, since he had been there. He had been all through that country and was well acquainted with it and its interests; and he could see no reason why it should be excluded from this territory, and he was confident, moreover, that the people there did not desire to be excluded.

Mr. Judd spoke further upon the subject.

Mr. Larrabee remarked that unless some very strong reasons were offered in support of the proposed extension of territory to the

northwest, he should vote for the amendment of the gentleman from St. Croix. He was well aware that the popular will was probably in favor of as great an acquisition of territory as that proposed by the committee—still he should be governed in his vote by the dictates of sound policy and the wishes of the people of the valley of the St. Croix. Their wishes he could know only through the member representing their interest, who tells us they are not only opposed to the line as established by Congress, but opposed to being incorporated into the future state of Wisconsin. And very good reasons are offered for this feeling. That valley we are informed is cut off in a great measure by a broad strip of barren country, from the settled and tillable portions of the southeast and must ever maintain but a difficult communication with them. They are a community by themselves, having no common interest with the southern and eastern portions of the territory, and would seem naturally to belong to a new territory or future state on the northwest. This should be a potent argument with the convention, for surely we cannot wish to incorporate a community entertaining these feelings. They would ever be productive of dissatisfaction and ill feeling. But there are motives of policy which should not be forgotten, and he hoped the convention would be guided by these, rather than by the mere desire of extending our territory. Now if that region is made a portion of the state, of course a political organization would of necessity have to be kept up, and that, too, at the expense of the other portions of the state; for surely many years would elapse before sufficient revenue would accrue from that region to keep up this organization. In the meantime the support of their organization would be a tax upon the rest of the territory entirely disproportioned to the benefits accruing. The same argument would apply with equal force to the region lying between the line proposed by the amendment and the coast of Lake Superior He did not see what great advantage was to be gained by including that coast, which would not be had just as well without it, commerce between the states and territories being entirely free. The country bordering on the northwest line would reap every advantage as well in one case as in the other. It is, then, a question of policy whether this extension will ever be of practical benefit, or whether it will not involve unnecessary burdens upon the state treasury, to say nothing of including a people who will always be dissatisfied with the alliance. He would be governed entirely by what would be

our best interests and the desire of the people of that remote region.

Mr. Rountree proposed the following substitute: "Section 1. It is hereby ordained and declared that the state of Wisconsin 'doth consent to and accept the boundaries' prescribed in the act of Congress entitled 'An Act to enable the people of Wisconsin Territory to form a constitution and state government, and for the admission of such state into the Union,' approved August 6, 1846, as hereinafter mentioned, and for the purpose of obtaining admission into the Union, which said boundaries are as follows, to wit:

" 'Beginning at the northeast corner of the state of Illinois, thence running with the boundary line of the state of Michigan through Lake Michigan and Green Bay to the mouth of the Menominee River; thence up the channel of said river to the Brule River; thence up said last mentioned river to Lake Brule; thence along the southern shore of Lake Brule in a direct line to the centre of the channel between Middle and South Islands in the Lake of the Desert; thence in a direct line to the headwaters of the Montreal River, as marked upon the survey made by Captain Cram; thence down the main channel of Montreal River to the middle of Lake Superior; thence through the centre of Lake Superior to the mouth of St. Louis River; thence up the main channel of said river to the first rapids in the same above the Indian village according to Nicolet's map; thence due south to the main branch of the St. Croix; thence down the main channel of said river to the Mississippi; thence down the centre of the main channel of that river to the northwest corner of the state of Illinois; thence due east with the northern boundary of the state of Illinois to the place of beginning.'

"*Provided,* however, That the admission of this state into the Union according to the boundaries as above described shall not in any manner affect or prejudice the right of this state to the boundaries which are 'fixed and established' for the fifth division or state of the Northwestern Territory in and by the fifth article of compact in the ordinance of Congress for the government of the territory northwest of the river Ohio, passed July 13, 1787, and by an act to divide the Indiana territory into two separate governments, approved the eleventh day of January, 1805, and by the admission of the states of Ohio, Indiana, Illinois, and Michigan into the Union, which boundaries are as follows, to wit: on the south by a west line drawn through the southerly bend or extreme of Lake Michigan

to the Mississippi River; on the west by the Mississippi River from the point where the said line intersects the middle of said river to its source, and thence due north to the forty-ninth parallel of latitude; on the east by a line drawn from the said southerly bend of Lake Michigan through the middle of said lake to its northern extremity, and thence due north to the northern boundary of the United States; and on the north by the said northern boundary.

"Section 2. The question which has heretofore been the subject matter of controversy and dispute between the territory of Wisconsin and the state of Illinois respecting the northern boundary line of said state, and with the state of Michigan respecting the western boundary line of said state, it is hereby proposed and agreed by the people of the territory and state of Wisconsin shall, unless Congress shall assent to the boundaries as herein claimed, be referred to the Supreme Court of the United States for adjudication and settlement; and the state of Wisconsin doth hereby further agree to the commencement and speedy determination of such suit with either or both of said states of Illinois and Michigan as may be necessary to procure a final decision by the said Supreme Court upon the true location of said northern and western boundaries.

"Section 3. This ordinance is hereby declared to be irrevocable without the consent of the United States."

The fifth article of the Ordinance of 1787 reads as follows: "There shall be formed in the said territory not less than three nor more than five states, and the boundaries of the states, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established as follows, to wit: The western state in the said territory shall be bounded by the Mississippi, the Ohio, and Wabash rivers, a direct line drawn from the Wabash and Post Vincents, due north to the territorial line between the United States and Canada, and by the said territorial line to the Lake of the Woods and Mississippi. The middle state shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line due north from the mouth of the Great Miami to the said territorial line, and by the said territorial line. The eastern state shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: *Provided*, however, and it is further understood and declared, That the boundaries of these three states shall be subject so far to be altered, that if Congress shall hereafter find it expedient, they shall have authority

to form one or two states in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted by its delegates into the Congress of the United States on an equal footing with the original states in all respects whatever." The act of Congress, approved January 11, 1805, to divide the Indiana territory into two separate governments, recognizes this line as the boundary in that division.

I now propose to accept of the boundaries as prescribed and fixed in the act of Congress of August 6, 1846, to enable the people of Wisconsin Territory to form a state government, with a proviso submitting the question of boundary to the Supreme Court of the United States for adjudication, that being in my estimation the only proper tribunal to decide this important and long disputed question—this being the most favorable time that we shall ever have to procure the proper adjustment of our claims to territory which has been apportioned to our neighboring states, they having sought and obtained admission into the Union, with extended boundaries. Much dissatisfaction is felt in many portions of this territory at the repeated encroachments of our neighboring states.

Now, sir, this question has been agitated by the people ever since the country was settled. At different times and in different ways have there been expressions of the people on the subject, both by public meetings and by committees of the legislature, some of them very able ones. Many very able men have thought that we are right in claiming the northern portion of Illinois, and that we can obtain our right by proper effort. It is not good policy to give up our rights without an effort. It may be urged that by claiming our rights at this time we shall embarrass our admission into the Union. I do not think there is any great force in it. Our entry does not at all depend on our boundaries. Other states have been admitted with unsettled boundaries. It is well known that a long controversy in relation to boundaries has been going on between Missouri and Iowa, which has been but lately settled. Another reason: We are now deciding on the acceptance of the act of Congress defining our boundaries. If we accept it, it cuts off all subsequent claim on our part. If we can get admitted without accepting the boundaries proposed, we had better, and then we may possibly or probably get

our rights hereafter. At any rate we have all to gain and nothing to lose.

Mr. Whiton made some remarks. Mr. Judd followed with some remarks, when the question was taken on the adoption of the substitute and decided in the negative.

The question then recurring on the amendment offered by Mr. Brownell, Mr. Reed said he had voted against the substitute offered by the gentleman from Grant (Mr. Rountree) for the reasons stated by the gentleman from Dodge (Mr. Larrabee). He preferred insisting upon our boundary to the British line. But if it was not the wish of the convention to claim the whole of the territory, but to leave a portion of it to be formed into another state, he should vote for the amendment offered by the gentleman from St. Croix.

Mr. Cole of Grant was surprised at the reasons offered by the gentleman from Winnebago (Mr. Reed) and the gentleman from Dodge (Mr. Larrabee) why we should relinquish the fine valley of the St. Croix. He had been informed by a gentleman in this house —a very intelligent gentleman, and one who he believed was well informed on the subject—that the valley of the St. Croix was one of the most desirable portions of the West; that, in addition to a rich soil and an abundance of timber, it embraced water power sufficient to turn all the machinery in the world. He believed the true cause of this movement was that the people in that region were aware that the valley of the St. Croix was susceptible of a dense population, and that, if set off into the new territory, the seat of government would be located somewhere in that valley. This he regarded as the best evidence of the value of the country proposed to be cut off, and the best of reasons why the convention should not consent to it. He believed the true policy was to retain all the territory we could, especially if the territory was valuable.

Mr. Brownell thought there was a disposition to misrepresent the character of the country within the different proposed boundaries. The country was flat and marshy and contained a multitude of small lakes. The character of the country was such that it was exceedingly difficult to find passable routes for roads. He made this statement for the purpose of setting members right in regard to the value of the country in question. The people whom he represented asked for this boundary solely on the ground of convenience.

Mr. Vanderpoel hoped the amendment would not prevail. The northern boundary had been fixed by Congress, and he thought it

was not to be expected that Congress would so far deviate from the line which it had once established, as was proposed by the amendment. He thought it was bad policy to cast away so large a tract of country. He believed it was a good country. It was particularly valuable as a lumber country. The lumber trade of that region would be very considerable, and although it was not now of much importance to the territory, he believed it would ere long be of very considerable consequence to the state. He had no doubt that Yankee enterprise would ere long appropriate and settle that portion of the territory, and render it an important auxiliary to the revenues of the state.

Mr. Richardson argued in favor of claiming the whole territory to the British line. He did not think it worth while to insist upon reclaiming the territory which had been incorporated into other states, but he did not know what authority the gentleman from Rock (Mr. Whiton) had for supposing that Congress would not consent that we should claim the whole of our unappropriated territory.

Mr. McDowell said when the question first came up he was in favor of "fifty-four forty." But on referring to the map, he had settled down upon "forty-nine," and from this he would not move.

Mr. Kennedy believed there was an entire misapprehension as to the nature of the country north of the portage. There was, it was true, quite an extensive range immediately north of the portage, of sandy barrens; but north of this strip there was an extensive range of fine arable land, generally well timbered, partly with pines but chiefly with maple, basswood, and other varieties of timber peculiar to rich and arable soil—a soil capable, to his personal knowledge, of producing two hundred bushels of potatoes to the acre, and as good crops of oats as could be produced in this region. He had traveled whole days on the headwaters of the Wisconsin in as fine a country as he had ever seen. Mr. Knowlton, formerly a member of the legislature from Crawford County, once stated on the floor of the council that in forty years the majority of population and the balance of power in the state would be north of the Wisconsin. Mr. Strong, of Iowa, rose and said, "I will back you at twenty years"; and he believed that time would show that Mr. Strong was right.

Mr. Jackson felt inclined to vote for the amendment offered by the gentleman from St. Croix, though he had not regarded it as a

question of very great consequence to the people of Wisconsin, generally, whether the amendment should be adopted or not. There was, however, one consideration of general policy which induced him to sustain the amendment. He thought it desirable to have as many states in the Northwest as possible. He believed this to be the common interest of the northern and western states. He believed the boundary proposed by the amendment would give to Wisconsin sufficient territory for a state, and in a compact and convenient form, and facilitate the formation of a state north of us.

The question was then taken on the amendment and decided in the negative.

Mr. Kilbourn moved to amend the article by adding a new section, as section 2, accepting of the conditions prescribed by the act of Congress for the admission of the state; and remarked that he thought this a proper place to insert the acceptance, and if inserted in the article on boundaries it would supersede the separate article before the committee on that subject. The amendment was adopted.

The committee then rose and by their chairman reported back to the convention No. 5, article on boundaries, with amendments; No. 13, article on acceptance of act of Congress, without amendments; and also reported progress on No. 15, article on schedule and miscellaneous provisions, and asked leave to sit again thereon. Leave was granted.

The question was then put upon concurring in the amendments of the committee to No. 5, article on boundaries, which were, first, to insert as section 2: "The propositions contained in the act of Congress aforesaid are hereby accepted, ratified, and confirmed; and it is hereby ordained that this state shall never interfere with the primary disposal of the soil within the same by the United States nor with any regulations Congress may find necessary for securing the title in such soil to bona fide purchasers thereof; and no tax shall be imposed on land, the property of the United States; and in no case shall nonresident proprietors be taxed higher than residents: *Provided,* That nothing in this constitution or in the act of Congress aforesaid shall in any manner prejudice or affect the rights of the state of Wisconsin to five hundred thousand acres of land granted to said state and to be hereafter selected and located by and under the act of Congress entitled 'An Act to appropriate the proceeds of the sale of the public lands, and grant preëmption rights.' Approved September 4, 1841."

Second, to insert between the words "of" and "Rum" the word "Iskodewaboor."

And the question having been put upon concurring in said amendments, it was decided in the affirmative.

[Mr. Rountree moved to amend the article by striking out sections 1 and 2 and inserting as a substitute the following, to wit:]

"Section 1. It is hereby ordained and declared that the state of Wisconsin 'doth consent to and accept the boundaries' prescribed in the act of Congress entitled 'An Act to enable the people of Wisconsin territory to form a constitution and state government, and for the admission of such state into the Union,' approved August 6, 1846, as hereinafter mentioned, and for the purpose of obtaining admission into the Union, which said boundaries are as follows, to wit:

" 'Beginning at the northeast corner of the state of Illinois, thence running with the boundary line of the state of Michigan through Lake Michigan and Green Bay to the mouth of the Menominee River; thence up the channel of said river to the Brule River; thence up said last mentioned river to Lake Brule; thence along the southern shore of Lake Brule in a direct line to the center of the channel between Middle and South Islands in the Lake of the Desert; thence in a direct line to the headwaters of the Montreal River, as marked upon the survey made by Captain Cram; thence down the main channel of Montreal River to the middle of Lake Superior; thence through the center of Lake Superior to the mouth of St. Louis River; thence up the main channel of said river to the first rapids in the same above the Indian village according to Nicolet's map; thence due south to the main branch of the St. Croix; thence down the main channel of said river to the Mississippi; thence down the center of the main channel of that river to the northwest corner of the state of Illinois; thence due east with the northern boundary of the state of Illinois to the place of beginning.'

"*Provided,* however, That the admission of this state into the Union according to the boundaries as above described shall not in any manner affect or prejudice the right of this state to the boundaries which are fixed and established for the fifth division or state of the Northwestern Territory in and by the fifth article of compact in the ordinance of Congress for the government of the territory northwest of the river Ohio, passed July 13, 1787, and by an act to divide the Indiana territory into two separate governments, approved the eleventh day of January, 1805, and by the admission of the states of Ohio, Indiana, Illinois, and Michigan into the Union; which boundaries are as follows, to wit: on the south by a west line drawn through the southerly bend or extreme of Lake Michigan to the Mississippi River; on the west by the Mississippi River from the point where the said line intersects the middle of said river to its source, and thence due north to the forty-ninth parallel of latitude; on the east by a line drawn from the said southerly bend of Lake Michigan through the middle of said lake to its northern extremity, and thence due north to the northern boundary of the United States; and on the north by the said northern boundary.

"Section 2. The question which has heretofore been the subject matter of controversy and dispute between the territory of Wisconsin and the state of Illinois respecting the northern boundary line of said state, and with the state of Michigan respecting the western boundary line of said state, it is hereby proposed and agreed by the people of the territory and state of Wisconsin shall, unless Congress shall assent to the boundaries as herein claimed, be referred to the Supreme Court of the United States for adjudication and settlement; and the state of Wisconsin doth hereby further agree to the com-

mencement and speedy determination of such suit with either or both of said states of Illinois and Michigan as may be necessary to procure a final decision by the said Supreme Court upon the true location of said northern and western boundaries.

"Section 3. This ordinance is hereby declared to be irrevocable without the consent of the United States."

And the question having been put upon the adoption of the same, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 21, negative 30; for the vote see Appendix I, roll call 75].

Mr. Brownell moved that the convention adjourn, which was disagreed to. And a division having been called for, there were 18 in the affirmative, negatives not counted.

Mr. King moved to postpone the further consideration of said article until tomorrow morning, which was agreed to.

Mr. Chase moved to lay No. 13, article on acceptance of act of Congress, on the table, which was agreed to. On motion of Mr. Gifford the convention adjourned.

SATURDAY, JANUARY 8, 1848

Prayer by the Rev. Mr. Lord.

The journal of yesterday was read and corrected.

Mr. A. G. Cole asked leave of absence for Mr. Secor; Mr. Estabrook asked leave of absence for Mr. Mulford. Leave was granted.

Mr. Fowler presented a petition from sundry inhabitants of Milwaukee County praying that a homestead exemption be secured to citizens by the constitution. Mr. Ward presented a petition from sundry inhabitants of Iowa County on the same subject. Said petitions were referred to the select committee on that subject.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 14, article on legislative.

Mr. Case introduced the following resolution, to wit: "*Resolved*, That the president and secretary of this convention are hereby authorized to issue a certificate to William W. Treadway for $10 for two days' services as assistant secretary pro tem of this convention." And the rules having been first suspended for that purpose, the said resolution was adopted.

Resolution No. 3, introduced by Mr. Kennedy yesterday, was taken up, when Mr. Kennedy moved to lay the same upon the table, which was agreed to.

No. 14, article on legislative, was then read the third time, when Mr. Sanders moved to recommit the article with instructions to amend the same as follows, to wit: "That the committee on the legislative be instructed to strike out the fifth section of the article on the legislative and insert the following: 'The senators shall be chosen for two years, on the day of the general election, and in the same manner as the members of the assembly are required to be chosen. They shall be chosen by single districts of convenient contiguous territory; and no assembly district shall be divided in the formation of a senate district.' "

Mr. Richardson said that he was on the point of making a motion to recommit the same article. There were some imperfections in it which escaped his notice yesterday. He was then suffering from indisposition and unable to give the matter a proper share of attention.

He moved to amend the amendment by adding to the instructions of the committee the following: "Amend section 7 by striking out the words 'a majority' and inserting in lieu thereof the word 'two-thirds'; also add to section 7: 'The final vote upon any bill shall be by ayes and noes, and the same shall be entered upon the journal.' "

Mr. Lovell spoke in opposition to the motion of Mr. Richardson. He was particularly averse to any change of the article as respected town and county government. Mr. Judd made some remarks.

The question was then put upon the adoption of the amendment [to the amendment], and it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 26, negative 31; for the vote see Appendix I, roll call 76].

The question then recurred on the adoption of the amendment of Mr. Sanders to recommit.

Mr. Reed spoke in favor of the resolution. In voting for the proposition as it stood he had done so rather as choosing the lesser of two evils. He preferred to vote for the proposition of single districts with a term of one year in preference to an election by one-half of the people. When he voted he did so with the intention of moving for a recommitment of the article with instructions to amend by provisions for a term of two years. Mr. Whiton here spoke. Mr. Reed expressed his desire to have the term of the senate longer than that of the house.

Mr. Chase moved to amend the amendment as follows: "Strike out the word 'annually' in the fifth section, and insert the words 'for two years.'" Mr. Sanders accepted the amendment as a modification of his motion.

The question was then put upon the motion to recommit, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 37, negative 22; for the vote see Appendix I, roll call 77].

No. 5, article on boundaries, was then taken up, when Mr. Castleman moved to lay the same upon the table. And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 29, negative 28; for the vote see Appendix I, roll call 78].

Mr. Lovell by leave made the following report, to wit:

"The committee on legislative, executive, and administrative provisions, to whom was referred the article entitled 'Legislative' with instructions to amend the same by striking out 'annually' in the fifth section and inserting 'for two years,' report the same back with the amendment which they were instructed to report, viz.: Amend by striking out the word 'annually' in the fifth section and inserting the words 'for two years.'

F. S. LOVELL, Chairman"

On this amendment Mr. Whiton spoke at length. Mr. Judd spoke in reply.

Mr. McDowell said that he must confess he did not know what gentlemen meant when they talked of "check wheels." He would not be surprised if they were wheels within wheels, whose object was to grind the people. He could not see the object of a two-year

term. At first he had favorably regarded the idea of biennial elections but on a sober second thought he had changed his opinion.

Mr. O. Cole said that he was placed in an embarrassing position in reference to the question now before the convention. He had in the committee advocated the principle of biennial elections, in order to preserve in the legislature a body of men experienced in parliamentary business. When he found it impossible to carry out this principle he had fallen back on that advocated by the gentleman from Rock (Mr. Whiton). He thought the present proposition by far more obnoxious than any that had been presented. If it were adopted there would be every second year an entire and radical change; and the principle of retaining in the legislature men of experience would be entirely lost sight of.

Mr. Beall here made some remarks.

The question recurred upon concurring in the report of the committee, when Mr. Lakin moved a call of the convention.

Leave of absence was asked for and granted, as follows: by Mr. Beall for Mr. Hollenbeck; by Mr. Carter for Mr. Warden; by Mr. Larkin for Messrs. Jones and Vanderpoel.

Mr. Chase moved that all further proceedings under the call be dispensed with, which was agreed to.

The question was then put on concurring, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 28, negative 29; for the vote see Appendix I, roll call 79].

Mr. Fagan moved that the convention adjourn, which was disagreed to.

The question then recurred upon [the passage of] the article, when Mr. Judd moved to lay the same upon the table, which was disagreed to. And a division having been called for, there were 17 in the affirmative, negatives not counted.

Mr. Chase said that several of the members who were in favor of a term of one year were absent, but that they would have another opportunity of testing the question when the committee of revision made their report.

Mr. Kilbourn moved that the convention adjourn, which was disagreed to. And a division having been called for, there were 21 in the affirmative and 25 in the negative.

Mr. Beall moved that the convention take a recess until half past two o'clock, which was disagreed to. And a division having been called for, there were 21 in the affirmative, negatives not counted.

The question was then put upon the passage of the article, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 50, negative 7; for the vote see Appendix I, roll call 80].

Mr. King moved that the convention take a recess until half past two o'clock, which was agreed to.

HALF PAST TWO O'CLOCK P.M.

The convention resolved itself into committee of the whole for the consideration of No. 12, article on internal improvements, Mr. Beall in the chair.

Mr. Whiton moved that the amendment of the gentleman from Racine (Mr. Lovell) be taken up. Mr. Martin hoped the consideration of the subject would be postponed. The gentleman from Racine was not here, and besides, he thought it should not be taken up at any rate till after the committee on education had reported. Every gentleman present desired that the public lands should be applied either to purposes of education or to internal improvements. How should they decide between them till they hear the plans proposed by the committees on those subjects? What if the committee on schools should report that they did not need the funds, after they had voted that they should not be applied to internal improvements? They would have to do the business over again. He hoped the subjects would be taken up together at some future day. Mr. Chase said that he was conscious that a desire had been manifested to dispose of the question of internal improvements and public lands before the committee on education should report, but he hoped it would not be done. When the proper time came he had some amendments to propose to the article on internal improvements, but at present the house was thin, and many gentlemen were absent who wished to make amendments.

After some desultory remarks the committee rose and by their chairman reported progress therein and asked leave to sit again. Leave was granted.

On motion of Mr. Larrabee the convention adjourned.

MONDAY, JANUARY 10, 1848

Prayer by the Rev. Mr. Lord.

The journal of yesterday was read. Mr. Chase presented a petition of Mason C. Darling and others of Fond du Lac County praying that a homestead exemption be secured to citizens by the constitution, which was referred to the select committee on that subject; and also presented the proceedings of a public meeting held in the county of Fond du Lac on the subject of homestead exemption, which was read and referred to the same committee.

The President presented to the convention sundry papers relative to the contested seat between William S. Hamilton and the Hon. John O'Connor, which were referred to the select committee on that subject.

Mr. Beall, from the select committee on the subject of homestead exemption, made the following report, to wit:

"The majority of the select committee to whom was referred the subject of an exemption of a certain amount of property from forced sale, etc., respectfully report No. 16, article on exemption, as follows:

EXEMPTION

"Section 1. The homestead of a family, not exceeding in value five hundred dollars, or at the option of the head of such family, the tools and machinery of any mechanic, or other real or personal property of any person being a resident of this state, not exceeding in value five hundred dollars, shall be exempt from forced sale on execution for any debt or debts growing out of or founded upon contract made after the adoption of this constitution: *Provided*, That such exemption shall not affect, in any manner, any mechanic's or laborer's lien, or any mortgage lawfully obtained.

"Section 2. The legislature shall make such other and further exemptions as to them shall seem proper.

"Section 3. The legislature shall at its first session pass suitable laws for the purpose of carrying into effect the foregoing provisions."

Said article was read the first and second times and ordered to be printed. Messrs. Ramsey and Estabrook, from the minority of said committee, dissented from said report.

Mr. Case introduced the following resolution, which was read, to wit: "*Resolved*, That a committee of three be appointed to ascertain the probable expense of printing the journal of this convention, the sketches of debate, and binding the same, each separately, and report to this convention as soon as practicable."

Mr. Judd moved that the vote of the convention on the final passage of the article [entitled "Legislative"] be reconsidered, and moved that said motion be laid upon the table, which was agreed to. And a division having been called for, there were 25 in the affirmative and 23 in the negative.

Resolutions were introduced and read as follows, to wit:

By Mr. Ramsey: "*Resolved*, That the committee on miscellaneous pro-

visions be instructed to inquire into the expediency of incorporating into the constitution a clause prohibiting the legislature from passing any law establishing rates of toll for grinding grain or rates of usury for money."

By Mr. Harvey: "*Resolved*, That the resolution heretofore adopted by this convention, directing the engrossment of the constitution on parchment, be and the same is hereby rescinded."

Mr. Chase moved that No. 5, article on boundaries, be taken up, which was agreed to.

Mr. Brownell moved [to amend] the article as follows, viz.: "Strike out all after the word 'viz.' in the ninth line, section 1, and insert: 'Leaving the aforesaid [boundary] line at the head waters of the Montreal River, where the state line of Michigan first intersects the same; thence in a straight line southwardly to a point a half-degree due north to the highest peak on Mountain Island in the Mississippi River; thence due south over said Mountain Island to the center of the channel of Mississippi River; thence down the center of the channel of said river as prescribed in the aforesaid boundary.'"

Mr. Whiton addressed the convention in opposition to the proposed amendment.

Mr. Brownell addressed the convention as follows: There are, I believe, two amendments before the convention, upon neither of which a vote has been taken; and I would that I possessed the power to give expression to the merits and important consequences which hang upon the question of boundary. To adopt the line as reported will be to inflict a blight upon the infant colony of my district, and it will be to blot out the star of Minnesota from the American banner. Because, sir, the country north of the line proposed, politically severed from its natural relation to the St. Croix valley, will be worthless indeed. And I am most conscious that, could the members of this convention but know the condition of things there, the character of the country, etc., less opposition would be felt to a proper division. As stated the other day in committee, all will see by reference to the divisions marked on the map that by the line here proposed something like an equitable division will be made for the two states east of the Mississippi River and south of the British line. I must differ from the friends of large states from principle. Under our system state governments are instituted for the accommodation and convenience of the people. And can it be maintained that the people living in the remote Northwest fall within these considerations? Too great a sacrifice is proposed to be made to the pride of erecting a great state, as though state governments were creations for the exercise of power and aggrandizement.

Mr. Featherstonhaugh hoped that members would recollect that they were laying down boundaries for Wisconsin, not for Minnesota. Mr. Jackson, the member of the legislature from that region, had told him that the country on Lake Superior was not barren and worthless, as it had been represented. The nearer they advanced towards the Fond du Lac of Lake Superior, the better the copper region became. The object of the citizens of St. Croix was to filch as much of the lake shore as possible. He considered it unjust to legislate away our birthright in favor of our sister Minnesota, as yet unborn.

Mr. Brownell said in reply to the gentleman from Calumet: I will only say that I cannot know what might have been the opinions of the representative from my district. But to suppose that the people there would prefer an attachment to a state government so distant, to having one established at home by the United States, is a supposition against reason. Both by act of Congress and confirmation by the convention of last year they had been encouraged to expect this. And who could fail to see that a government established there would direct attention to the country and stimulate its settlement and prosperity? I must therefore think that this is a sufficient refutation to the conclusion that it is not the desire of the St. Croix people to go into a territorial government.

The question was then put upon the adoption of the same, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 5, negative 52; for the vote see Appendix I, roll call 81].

Mr. Brownell moved to amend the article as follows: Add to the first section the following: "*Provided*, In case the Congress of the United States should not assent to the said alteration, then the following line is submitted for the approval of Congress: Leaving the aforesaid boundary line in the middle of Lake Superior, opposite the mouth of Burnt Wood River; from thence through said mouth of Burnt Wood River in a direct line southwardly to the head of the most northwesterly bend of Lake Pepin to the channel of the Mississippi River; thence down the center of the channel of said Lake Pepin and the Mississippi River as prescribed in the aforesaid boundary."

In support of the amendment Mr. Brownell said: I make this amendment as a final effort to shield the inhabitants of my district from the great grievance of becoming attached to so distant a government, and because I believe Congress never will approve the line reported. So unnatural and unreasonable a one with reference

to the Northwest should not be adopted. I do know that the united protest of the people will go further, and to provide against all contingency I propose this amendment. By leaving the question thus open to the discussion of Congress, we shall increase the prospect of an early admission into the Union, and I would therefore recommend this consideration to those who seem to fear that any departure from the act of Congress, providing for state admission, will endanger the progress of Wisconsin's application for admission. I hope this amendment may be acted upon with reference to the consequences which are involved; and if the little settlement to the north must be held as an integral part of the state, let it be so by the decision of Congress. Give them this opportunity for reconsideration. It does appear to me, sir, that there are considerations both of policy and of principle involved in this amendment; and I must say that I am established in the opinion that in adopting the line reported, to Wisconsin herself, in every point of view, it will be a loss—all loss. Sure I am, that in supporting a more southern division of the territory I am only giving expression to the harmonious and well-settled desire of the entire people of the north.

The question was then put upon the adoption of the same, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 2, negative 53; for the vote see Appendix I, roll call 82].

Mr. King moved to amend the article by striking out all after "1846" in the fifth line of the first section and inserting as follows: "*Provided*, however, That the admission of this state into the Union, according to the boundaries described in the act of Congress, shall not in any manner affect or prejudice the right of this state to the boundaries which were 'fixed and established' for the fifth division or state of the Northwestern Territory, in and by the fifth article of compact in the ordinance of Congress for the government of the territory northwest of the river Ohio, passed July 13, 1787, and by an act to divide the Indiana territory into two separate governments, approved January 11, 1805, and by the admission of the states of Ohio, Indiana, Illinois, and Michigan into the Union."

Mr. King said that the proposed proviso merely entered the protest of the new state against being a sufferer by the act of Congress. We would accept the boundary proposed by Congress but at the same time assert our right to the whole, under the Ordinance of 1787.

Mr. Whiton spoke in opposition to the proposition. Mr. Reed said if the argument of Mr. Whiton proved anything, it proved too

much. He (Mr. Whiton) commenced by asserting that if they adopted the proviso they could not come into the Union because they asserted their rights; then he went on to show that they had no right. He (Mr. Reed) could not see how they were to be prejudiced in getting into the Union by adopting the proviso.

Mr. Lovell said that as he understood the proposition of the gentleman from Milwaukee (Mr. King) it was proposed to claim all the territory to the north, up to the British line. One word in regard to this northern territory. The ordinance under which gentlemen made this claim was passed in July, 1787. Up to 1818 we had had no recognition of a claim north of the St. Louis River. That territory had hardly been claimed, or at any rate our right to it was a very dim one. It consisted of a tract which all united in representing as cold, barren, and inhospitable. Were gentlemen prepared to hazard an admission into the Union for that small and barren strip? If, on the other hand, the gentleman from Milwaukee (Mr. King) wished to make out a claim to the northern portion of Illinois, he would ask him to look at the act of Congress of 1846. That act was drawn up by Mr. Douglas, then a member of the House of Representatives, now a United States Senator from Illinois. In it were most fully and particularly set forth the boundaries of that state. The particularity with which that gentleman watched this question and the careful manner in which Congress passed the act were evidence of the impossibility of setting up a successful claim on the part of Wisconsin to the portion of territory in question.

Boundary questions were the most difficult in the world to settle. In two instances in our own country they had actually produced civil war. Was it probable that, with this truth before their eyes, Congress would permit Wisconsin to come into the Union with her boundaries unsettled, leaving this difficulty open and unadjusted? The question of our right to the northern part of Illinois had been fully disposed of. We had no right to it. Congress had a right to fix the southern boundaries of Wisconsin where they chose.

He believed the boundary as it now stood in the article before the convention would give the most satisfaction of any that could be suggested, and he hoped the article would be adopted without appending to it any provision which might hazard the admission of Wisconsin into the Union.

Mr. Brownell: I shall support this amendment. I cannot think this qualified assent to the boundaries of the new state as prescribed by act of Congress of August 6, 1846 will prevent our early admission. It did not in the case of Missouri and other states; and since the claim of this territory under the Ordinance of 1787 has been pronounced good and irrevocable by the ablest of jurists, I see no propriety in tamely yielding what has virtually been conceded as a right by Congress itself. If an equitable division of the territory cannot be made, why not include the whole of it up to the forty-ninth parallel of latitude? And I would tell gentlemen here who are so fond of the acquisition of territory that one of the best districts of copper mines in Wisconsin is on the north coast of Lake Superior, outside of the congressional line.

Mr. Chase said that he understood Mr. King's provision as reserving to Wisconsin a right of contesting her boundaries before the Supreme Court of the United States. He was fully convinced that Congress would never admit Wisconsin into the Union with unsettled boundaries. But even should it do so, the provision now sought to be inserted in the article would only tend to involve the new state in a heavy bill of costs. Even if successful we could not obtain territory forming part of Illinois, but only compensation for it, and that compensation would be only the comparatively valueless territory on the north. Michigan had tried the same experiment and demonstrated it fully. It was true the "Toledo War" was a farce; but the cost of paying for it was no farce.

Mr. King said that he had had no intention of eliciting so much debate when he introduced his amendment. As regarded the fears entertained by gentlemen that the constitution might be rejected by Congress, he did not see any ground for them. He was satisfied that if we presented a republican form of government, we should be admitted.

Mr. Whiton spoke at some length. Mr. Beall made some remarks in reply.

Mr. Kilbourn concurred with Mr. Whiton in believing that the proposed acceptance of the boundaries prescribed by Congress would with the proviso of Mr. King be no acceptance at all. It would be enacted in the first section of the article that we do accept the boundaries prescribed by Congress, provided that we do not He thought that Congress had prescribed these boundaries after a

sufficiently careful examination. Congress gives us permission to form a state government and tenders to us several very beneficial provisions, such as the grant of the sixteenth section in every township for a school fund; a grant of seventy-two sections of land for university purposes; five per cent of the net proceeds of the sales of public lands; and several minor concessions. These provisions are of immense value. Congress says to us: "If you accept our boundary, we admit you into the Union with these provisions." It was for the convention to discuss and decide this simple question. Our highest policy was to accept the boundaries of Congress unconditionally. Should the convention adopt the proposition of Mr. King, we would sacrifice all the provisions offered by Congress, even if we had a right to the boundaries proposed under the Ordinance of 1787. He (Mr. Kilbourn), for one, would not be willing to relinquish the propositions of Congress for the whole fee simple of the northern country.

Mr. Kilbourn here gave a history of the case of the disputed boundary between Michigan and Ohio and the action of Congress thereon. Congress would never admit Wisconsin into the Union with open and unsettled boundaries, nor consent to leave open a door for civil war. Congress might today, with the consent of Michigan or Illinois, annex Wisconsin to either of those states.

Mr. Castleman said he would vote for Mr. King's proposition but with an entirely different view of the matter from what was taken by other gentlemen. He considered the proposition as merely reserving to Wisconsin the right of submitting to the Supreme Court of the United States the question whether Congress had transcended the powers given it by the Ordinance of 1787, not as claiming a rejection of the boundaries prescribed by Congress.

Mr. Reed could not see any force in the argument used against the proposition other than that if we adopt it, we may be embarrassed in getting into the Union. It was as clear as noonday to him that we had no right to the northern portion of Illinois. The proviso had reference only to the territory north of Wisconsin. The whole matter turned on the question whether or not the adoption of the proviso would embarrass our admission into the Union.

Mr. Jackson said that the operation of the proviso would be to leave a question open to be settled by the Supreme Court. The whole matter would be a bill of expense to the state and prejudice our admission into the Union. He had voted for Mr. Brownell's

proposed boundary because he believed that, with the exception of the valley of the St. Croix and shores of Lake Superior, the whole country to the north was a barren wilderness, the government of which would be more expensive to the state than its resources would be increased by it. He considered the question chiefly of importance in so far as to have it settled.

And the question was then put upon the adoption of the same, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 17, negative 38; for the vote see Appendix I, roll call 83].

The question was then put upon ordering the article to be engrossed for a third reading, and was decided in the affirmative.

Mr. Sanders moved that the convention take a recess until half past two o'clock, which was agreed to.

HALF PAST TWO O'CLOCK P.M.

Mr. Estabrook, from the committee on education and school funds, reported No. 17, article on education and school funds, as follows:

EDUCATION AND SCHOOL FUNDS

"Your committee have availed themselves of such means as were within their reach to ascertain the amount and character of the resources from which the educational fund of the state is to be derived; and, although positive accuracy could not be attained, yet sufficient has been disclosed to justify your committee in congratulating the convention and the state upon the amplitude of the educational fund and its adequacy when combined with such funds as shall be raised by tax in accordance with the provisions of the article herewith submitted to bring a sound education within the reach of every child in the state through all coming time.

"There are according to Lapham's *Wisconsin* 2,300 townships of land of six miles square within the territory of Wisconsin. Within each of these is one section of 640 acres reserved and set apart by Congress for school purposes.

"The whole number of acres thus appropriated is 1,472,000. Of this, probably about 250,000 acres lie within the populated parts of the state. The estimated value of these lands is about $3.00 per acre.

"Of the 46,080 acres heretofore granted by the United States to this state for the purposes of a university, 35,712 acres have been selected by commissioners appointed at different times for that purpose by the legislature. Most of these lands have been judiciously located and are of the choicest quality.

"Your committee have for greater convenience subjoined the following table of estimates:

Area of territory (square miles)	83,065
No. of townships	2,300
No. of school sections	2,300
No. of acres in do.	1,472,000
Estimated number of acres in surveyed portion of territory	250,000
Average value of do. at $3.00 per acre	$750,000
Interest on do. at 7 per cent	$52,500
Estimated number of children between 4 and 16 years, being 20 per cent of population of 212,000	42,400
Estimated cost of education per scholar per annum	$3.00
Whole cost of education per annum, based on above estimate	$127,000
No. of acres of university lands	46,080
No. of acres selected	35,712
No. of do. to be selected	10,368
Estimated value of university lands	$138,240

And also reported the following article:

EDUCATION AND SCHOOL FUNDS

"Section 1. The supervision of public instruction shall be vested in a state superintendent and such other officers as the legislature shall direct. The state superintendent shall be nominated by the governor, and by and with the advice of the senate appointed for such term of office and with such powers, duties, and compensation as shall be prescribed by law.

"Section 2. The proceeds of all lands that have been or hereafter may be granted by the United States to this state for educational purposes (except the lands heretofore granted for the purposes of a university), and all moneys, and the clear proceeds of all property that may accrue to the state by forfeiture or escheat, and all moneys which shall be paid as an equivalent for exemption from military duty, except in time of war, and the clear proceeds of all fines assessed in the several counties for any breach of the penal laws, and all moneys arising from any grant to the state where the purposes of such grant are not specified, and the five hundred thousand acres of land to which this state is entitled by the provisions of an act of Congress entitled 'An Act to appropriate the proceeds of the sales of the public lands and to grant preëmption rights,' approved the fourth day of September, 1841, and also the five per centum of the net proceeds of the public lands lying within this state, to which the state shall become entitled on her admission into the Union (if Congress shall consent to such appropriation of the two last-mentioned grants), shall be set apart as a separate fund, to be called the school fund.

"Section 3. The revenues arising from the school fund shall be exclusively applied to the following objects, to wit: first, to the support and maintenance of primary schools in each town and district, and the purchase of suitable libraries and school apparatus therefor; second, the residue shall be appropriated to the support and maintenance of county academies and normal schools, and suitable libraries and apparatus therefor.

"Section 4. The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as may be throughout the state; and such schools shall be equally free to all children between the ages of four and sixteen years, to whom the tuition shall be gratis. And no sectarian instruction shall be allowed in said schools.

"Section 5. Provision shall be made by law for the distribution of the income of the school fund among the several towns and cities of this state for the support of district schools therein in some just ratio to the number of children and youth resident therein between the ages of four and sixteen years.

"Section 6. Each town and city shall be required by law to raise annually for the support of district or primary schools therein a sum not less in amount than one-half that received by such town or city respectively, from the income of the school fund, to be levied and collected as other town or city taxes are. And no appropriation shall be made from said school fund, to any city or town, for the year in which said city or town shall fail to raise such tax in manner aforesaid; nor to any school district for the year in which a school shall not be kept up at least three months.

"Section 7. When the population of any county in this state shall exceed twenty thousand in number, provision shall be made by law for the erection of an academy in such county, with male and female departments, and a normal school department for the education of teachers for primary schools.

"Section 8. Provision shall be made by law for the establishment of a state university at or near the seat of state government, and for connecting with the same from time to time such colleges in different parts of the state as the interests of education may require. The proceeds of all lands that have been or may be hereafter granted by the United States to this state for the support of a university shall be and remain a perpetual fund, to be called the University Fund, the interest of which shall be inviolably appropriated to the support of the state university aforesaid.

"Section 9. The secretary of state, treasurer, and attorney general shall constitute a board of commissioners for the sale of the school and university lands, and for the investment of the funds arising from the same. Any two of said commissioners shall be a quorum for the transaction of all business pertaining to the duties of their office. Provision shall be made by law for the sale of said lands after the same have been appraised. And when the same shall be sold, and the purchase money shall not be paid at the time of the sale, the said commissioners shall take security for the payment of the sum that shall remain unpaid, in a mortgage upon the same, with seven per cent interest payable annually at the office of said treasurer. The said commissioners shall be authorized to convey said lands to purchasers by a good and sufficient deed, and to discharge any mortgages which may have been taken as security as aforesaid, when the sum due on the same shall have been paid. The said commissioners shall have power to withhold any of said lands from sale when they shall deem it for the public good and shall invest the moneys arising from lands that shall be sold as aforesaid and all other university and school funds in such manner as the legislature shall provide."

Said article was read the first and second times and ordered printed.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 5, article on boundaries, which was read the third time. The question was then put upon the passage of the article, and was decided in the

affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 53, negative 3; for the vote see Appendix I, roll call 84].

The convention then resolved itself into committee of the whole for the consideration of No. 4, article on banks and banking, Mr. Sanders in the chair.

The majority and minority reports of the committee, to whom the subject had been referred, were taken up and read.

Mr. Whiton moved to amend the majority report by striking out all after section 1. Mr. Whiton remarked at length upon this motion and in conclusion put two questions to the chairman of the committee on banking: first, whether he considered banking a proper and legitimate business; and second, whether, if it were a proper and legitimate business, it should be free to all, or restricted to a few.

[Mr. Whiton said he had not expected at this age of progression that a man would be found making a proposition calculated to confine the profits of banking to a few, but that whatever might be done he had expected that all classes of community would have equal privileges extended to them. But the proposition presented by the committee on banking, the chairman of which is one of the most ultra of progressives, had shown that he was mistaken. If any person can bank under any law which the provision authorizes, he must be one of the most powerful, rich, and influential persons. Under special acts, this must be so. Banking, if done at all, should be free to all classes. The first question is: Is it proper that anyone should be engaged in it? The committee think it is, but wish to confine it to a few. He had the strongest possible objection to this view of the subject. Were it not that the people had wrong views with reference to this matter, he should be opposed to all legislation on the subject whatever; but leave every man who pleases free to create banks. The issuing of bank paper having been authorized by legislative action, the people do not consider the bills as mere promissory notes, but as money; hence he thought there was necessity for some laws on the subject. He would ask the chairman of the committee two questions: First, is banking a legitimate and proper business? If so, is it not proper that it should be free to all who will give the requisite security? He should object to giving preference to a special few, to the exclusion of the many, as unwise, unjust, and improper. It would be giving all the privileges to the rich, the powerful, and the influential, who will be

able to logroll and force the measure through the legislature, and insure a majority of the voters in its favor.—*Tri-Weekly Express*, Jan. 13, 1848.]

Mr. Chase said he had no objection to answering the questions of his Democratic friend from Rock, but he had objections to going into a long debate on the subject at this time. To the first question he would answer decidedly in the negative. He did not consider banking, under any modification, a legitimate and honest business. The second question, therefore, would need no answer.

He would say a few words in relation to the motion of the gentleman from Rock to strike out all after the first section of the majority report. The proposition was an insidious one. The gentleman had given no intimation of what he would have inserted instead, and yet that was the very thing on which the vote to strike out should depend. Perhaps he (Mr. Chase) might be satisfied if nothing were to be inserted; the whole question would then be in the hands of the people; and he felt sure that public sentiment was right on this question. But he believed the gentleman had some scheme behind, and he thought he ought to let us know what he proposed, as it might have an important bearing upon the vote for striking out. The gentleman had harped about giving the privilege of banking to the poor. It was sheer sophistry. Banking was no business for the poor and was never intended to be. The gentleman's remarks were evidently thrown out only as a feeler. This indirect way of attack was unfair. Let the gentleman show his hand; let him bring forward a better section, and we will all vote for it.

Mr. Whiton remarked further and in conclusion withdrew his motion.

The committee then rose and by their chairman reported the same back to the convention without amendment.

[Mr. Whiton said he had supposed that matters were referred to a committee to get an opinion on the subject referred. But such has not been the case in this instance. The gentleman says it is unwise, improper, and dishonest to carry on banking, and yet in his report points out a way in which this dishonesty can be consummated. He now protested against the whole of his report. Mr. Chase thought the gentleman mistook either him or the spirit of

the report. He thought the sections left it entirely with the people, and he was not afraid to leave it there. On motion of Mr. Whiton the committee rose and reported the article back to the convention without amendment.—*Tri-Weekly Express*, Jan. 13, 1848.]

No. 4, article on banks and banking, was then taken up, when Mr. Whiton moved to amend the article by substituting the following:

"Section 1. The legislature of this state shall not have power to grant any special bank charters nor any special banking privileges whatever; but associations may be formed for banking purposes, under general laws, and conveying rights equally to every citizen.

"Section 2. Every such law, before it takes effect, shall after it has passed through the usual forms of legislation be published in at least one newspaper in each county of this state in which a newspaper is published, for ten weeks successively next preceding the next general election, and at said election shall be submitted to a vote of the electors of this state, and shall be approved by a majority of the votes cast on that subject at said election, which votes shall be ascertained, canvassed, and returned in such manner as the legislature may provide.

"Section 3. The stockholders in every bank and banking association shall be made individually liable to the amount of their stock therein for all its debts and liabilities during the time of their holding the stock and for the term of six months after they shall have transferred the same. And in case of the insolvency of any such bank or association, the bill holders thereof shall have preference in payment over all other creditors of such bank or association.

"Section 4. The legislature shall provide by law for the registry of all notes and bills put in circulation as money and shall require ample security for the redemption of the same in specie.

"Section 5. The legislature shall not have power at any time to authorize any bank or banking association to suspend specie payments.

"Section 6. Any law passed under the provisions of this article may be amended or repealed in such manner as the said law shall enact and in no other manner whatever."

[Mr. Whiton moved as a substitute for the whole the article which had been submitted in the minority report of the committee on banks and banking. He considered the substitute proposed much better than the article submitted, although it might not be perfect. Both articles assume that banking is a proper business; and the chairman who reported them cannot deny that it is proper and legitimate. One confines the business to a few; the substitute leaves it open to all who wish to go into it. Is not then the substitute the most in accordance with the enlightened spirit of the age? He thought there could be no comparison made between the two propo-

sitions which would not result in favor of the substitute. By the article as it stands the people have not the entire control over the matter; they can only grant the privilege of banking to whom the legislature please. If the substitute prevails and becomes a part of the constitution and a law is passed under it, the people can confer the power of banking on any or all persons who can give the requisite security. Can gentlemen with this view of the case decide in favor of the majority report? If they do, he should be extremely curious to know their reasons for such decision. A legislature will not pass a law that will grant privileges under this general principle unless proper security be given. In either case the legislature will be satisfied that there will be no public loss. In one case, the people will have power to grant privileges only to a few; in the other, to everyone.

It is said that this article does not require sufficient security. The legislature may require any security they please—the article does not prevent it. The gentleman from Fond du Lac (Mr. Chase) thinks it immoral to go into banking; yet he is willing to give people power to go into it. He would ask the gentleman if he was willing to limit this power to a few. The gentleman must go contrary to all his principles of democracy, morality, right, and justice, if he does.—*Tri-Weekly Express,* Jan. 13, 1848.]

Mr. Whiton remarked at considerable length in support of the motion, contending that the whole matter ought to be left in the hands of the people and that they should not be tied down to the mere privilege of ratifying what had been submitted to them by the legislature.

Mr. Chase, in reply, said that the whole matter by his proposition would be left in the hands of the people. The legislature would have the power only to put the question in proper shape—to submit a definite, tangible proposition. What would the proposed substitute submit to them? They could never know what, and they might be surprised at any time to find themselves saddled with a rotten banking system without ever knowing how they came so. But he thought the whole question as far as bank men were concerned turned on one point, and that was, which was the easiest and most feasible way for them to get their system established. They know that no banking system can confer equal rights on all the people. They know, too, that when a special bank charter is submitted to

them, they will see what it is and vote it down. The bankites imagine—and very reasonably—that a general banking law is easier to obtain than special charters; for then the whole race of speculators and sharpers throughout the country would unite for one general, simultaneous effort, whereas in the latter case the effort would be divided and different interests might clash. That is the reason for this movement for a general banking law. He was surprised to hear the gentleman base his argument for a general banking law on the ground of equal rights—to speak of democracy and progress in this connection. He had supposed it our duty in the fundamental law we were forming to guard the people against the hasty, injudicious, or corrupt action of their legislators—to guard them from monopoly in any event. For that reason he had coincided with the majority report, that if any special privileges were to be granted they might be granted by the people directly, not by officeholders.

Mr. Rountree said there were two propositions before the convention, and the question was which should be adopted. He was opposed to the adoption of that of the minority of the committee and would state some of his reasons. The gentleman from Rock had argued that the age of special privileges was past and therefore we should establish a system of general banking. Now the very idea of banking in any form implied special privileges, and these special privileges were the only temptation for anybody to enter into it. If we establish free banking, none but men of capital can go into it, unless, indeed, we so fix it that men can bank without capital; and that would be worse still. Free banking, then, was merely giving special privileges to capitalists and speculators in general, instead of confining them to a few. Did democracy require this? According to his view, both democracy and sound policy required that banking should be restricted and discouraged as far as possible. Did the gentleman think that banking created money value? That, certainly, was an opinion which belonged to another age. They might create rags—they might afford those engaged in it a means of enriching themselves, but they added nothing to the real wealth of a country. They only transferred money from the hands of the laborer to those of the speculator. The gentleman had said that if the business were a legitimate one, all men should be allowed to go into it equally. True—but he did not consider any business a legitimate one which produced nothing to the country, and banking

was of that kind. It was notorious that it was carried on for speculation merely. The expenses were small, and the profits enormous, and the people had to foot the bill in the end. It was peculiarly proper, then, that the people should be consulted, particularly before any institution of the kind could go into operation. If they should ever feel any urgent need of banks they would never be at loss for the means to create them. The system of free banking proposed by the amendment he regarded as the worst of all systems. It united the interests of all speculators and all who wanted to live without work, and brought their influence to bear at once and in concert upon a general law.

If the people want banks, the legislature can grant one for every county; and the article reported by the majority wisely provides that there should be but one submitted at once, so that there might be no combination. He was opposed to banks wholly; but if we must have them, he thought the people should have an opportunity to consider and mature them. The majority report provided that banks might be created after the people had had time to consider them. He thought that was as it should be. There was a disposition abroad to live without work, and he thought it should not be encouraged. It was not long since the whole West was flooded with irresponsible paper, to the ruin of all honest business and industry. We should take care that it should not be so again. If we established any system of banking we should incorporate in it the individual liability principle, else we have no protection against dishonesty. The general banking system proposed throws open the door to all fraud and iniquity, and he hoped that that at least would not be adopted. It had been said last spring, when the old constitution was before the people, that there was danger if it was rejected that a system of free banking would be established in the next; that the eastern portion of the territory would make a desperate push for it and so wished to defeat the constitution to afford them the opportunity. The people of the West had said that they could not believe it—that the day had gone by when anybody would dare do so; and so they voted against the constitution on account of other defects it contained. But he was sorry to find that these prophecies were true; that the very movement was now being made; and he really feared from remarks he had heard that it might find some favor with the convention. If so, he should regard it as the most

disastrous thing that could possibly happen. The deep interest he felt in it, both personally and as a representative of the West, had impelled him to speak against it now, and he would continue to oppose it in every way in his power.

Mr. Judd moved to amend the amendment by substituting the following:

"Section 1. There shall be no bank of issue authorized or permitted within this state, except such as are authorized by the following sections of this article.

"Section 2. No law authorizing banking in any manner or under any pretense whatever shall ever be passed by the legislature of this state, unless the said law be general in its terms and convey rights equally to every citizen. Such law shall not take effect unless it shall have been submitted to the electors of this state at a general election and shall have received a majority of all the votes cast at such election upon that subject.

"Section 3. The stockholders of every bank so to be authorized shall be individually liable to the full amount of their stock therein for all its debts and liabilities during the time of their holding such stock and for six months after they shall have transferred the same. And in case of the insolvency of such bank, the bill holders thereof shall have preference in payment over all other creditors of such bank.

"Section 4. The legislature shall not have power at any time to [authorize any bank to] suspend specie payment.

"Section 5. Any law authorizing banking, passed in pursuance of the provisions of this article, may be altered, amended, or repealed in the same manner as it was adopted."

[Mr. Judd believed the people demanded some expression on the subject of banking. He believed the old constitution was rejected mainly on account of that article. He thought it was doubtful whether a majority of the people were in favor of banks at all; and he thought that special charters were not best calculated to meet the interests of the people. The report of the committee holds out to the people the idea that they may have banks and yet fixes it so that they cannot possibly obtain them. He did not believe that the day had arrived when we should go back to special charters. They are monopolies with which the masses of community can have nothing to do. They overturn the great principle of equality. He was himself opposed to banking in any form, but he was aware that many of his friends thought differently, and he was willing to let the people decide whether they would have banks, and he was willing to abide the will of the majority. No bank should be other than general in its character and free to all alike. He was willing that

everything in reference of the state should be left to the people; and in their decision he would abide. He hoped the day would never come when a majority of the people shall be in favor of having any banks. He had seen more gold and silver in this territory in three months than he saw in a business of twenty-five years in the state of New York.—*Tri-Weekly Express,* Jan. 13, 1848.]

Mr. Judd spoke upon this amendment at considerable length.

Mr. Lovell said he was first inclined to regard the substitute of the gentleman from Dodge (Mr. Judd) as identical with the amendment proposed by the gentleman from Rock (Mr. Whiton). In this it seemed he was mistaken. Before examining the points of difference, he would canvass a little the position assumed by the gentleman from Dodge in the most extraordinary of the extraordinary speeches which had yet fallen from that gentleman—a sort of mermaid speech—amphibious—half human, half fish. In the outset he read the chairman of the committee on banks a furious lecture upon consistency and then proceeded to state the depth and breadth of his hostility to banking in every shape and phase. This speech was made in support of a proposition for the creation of the very creature of his abhorrence, wildcat banking in its wildest form, without constitutional check or restriction. The chairman of the committee on banks avowed his hostility to banks, and the proposition emanating from the committee, all here concede, would render banking impossible. The convention might determine whether the remarks of the gentleman from Dodge, coupled with his substitute, were more coherent or consistent than the object of his denunciation. After such a lecture he was indeed surprised to find such important differences in the propositions and that those differences were in favor of an easily obtained and but partially restricted system of banking. He observed that both the amendment and the substitute contained the words "convey rights equally to every citizen." Did these words mean anything? Or were they unmeaning forms to catch votes? If they meant anything, the key word was "citizen." Perhaps the gentleman from Dodge intended it as an inducement to foreigners to become citizens! Was that it? The proposition now under consideration provided that a majority only of the votes cast on the subject should be sufficient to engraft a banking system into the constitution. I prefer the original proposition in this respect. The power of making money and regulating

the currency is among the highest prerogatives of sovereignty and the sovereign in this country. The people should not put that control out of their reach, at least not without the vote of a majority of all the votes cast. The original report seems to be preferable in another view in providing that the stockholders shall be individually liable for all the debts of the corporation. The gentleman from Dodge (Mr. Judd) in opposing this principle said that there would be no banking under this provision. Now it would seem that this ought to be well received by so bitter an opponent of all banks—but no! The gentleman says that nowhere under heaven does such a system prevail. Now this was the Scotch system precisely as he (Mr. Lovell) understood it.

Mr. Judd explained.

Mr. Lovell understood the gentleman to say as he explained, also. "No prudent man would operate in banking with such a provision," said the gentleman. Why, the Scotch people were esteemed the most prudent on the earth! That this restriction and that guard proposed from time to time for the last twenty years had always been met with the cry that no prudent man would undertake the business. The restrictions and guards have prevailed, the cry subsided, and the business proceeded as before. Whenever powers over this subject are yielded up to private corporations and associations it should be only upon condition that the whole community should be fully secured. He did not agree with the bank committee, however, on one subject. He thought that general laws for corporations were to be preferred in every case where they could be attained by such general laws. It was a part of his instructions, and his feelings concurred with his instructions to vote for general laws and "no monopoly." He would vote against the substitute, endeavor to perfect the amendment of the gentleman from Rock, and if reasonably perfected and restricted, would give it his vote.

Pending the question on the adoption of said amendment, Mr. Beall moved that the convention adjourn. And the question having been put upon the said motion, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 32, negative 26; for the vote see Appendix I, roll call 85].

The convention adjourned.

TUESDAY, JANUARY 11, 1848

Prayer by the Rev. Mr. Read.

Mr. King moved that the reading of the journal be deferred, which was agreed to.

Mr. Lyman presented two petitions from the inhabitants of Dodge County, praying that homestead exemptions be secured to citizens by the constitution. The petitions were read and referred to the committee of the whole. Mr. Beall presented a petition from sundry inhabitants of Racine County on the same subject, which was also referred to the committee of the whole.

Mr. Fowler, from the select committee to whom that subject had been referred, made the following report, to wit:

"The committee on incidental expenses under the following resolution, to wit: 'That the committee on expenses be directed to ascertain and report to the convention as soon as practicable the amount of stationery which has been furnished for the use of the convention, giving distinctly the items of stationery furnished, and the cost of the same,' report that from a statement made by the superintendent of territorial property, he has furnished to each member the following items of stationery, viz.:

1 Congress knife	$1.37½
1-2 ream Jessup's letter paper	1.50
9-20ths Jessup's cap paper	1.50
2-20ths bank envelope	.45
1-20th bank envelope	.18¾
1-40th bank envelope	.13¾
1 cork inkstand	.04⅔
1 wood inkstand	.08⅓
1 letter stamp	.15⅔
1 wafer box	.01
1-10th lb. harp wax	.09
red tape	.03⅔
1 paste cup	.04⅛
Total	$5.62½

"Respectfully submitted,

A. FOWLER, Chairman,"

Mr. King introduced the following resolution, to wit: "*Resolved*, That the convention will, on and after this day, hold evening sessions from 7 to 9 P.M." And the fifth rule having been first suspended for that purpose, the said resolution was adopted.

Mr. Case introduced the following resolution, to wit: "*Resolved*, That so much of the resolution adopted by this convention on Friday, the seventh day of January, as determines the per diem allowance of the secretary and assistant secretaries from and after the above date be rescinded." Mr. Case moved that the fifth rule be suspended for the [consideration of] said resolution, now, which was disagreed to.

Resolutions were introduced and read as follows, to wit:

By Mr. A. G. Cole: "*Resolved*, That the twentieth rule be and the same is hereby amended by adding to the same after the word 'thereto' in the last line

the following words: 'but that no debate shall be had upon any such proposed amendment.'"

By Mr. Gifford: "*Resolved*, That a committee of three be appointed to ascertain and report the cost of printing the journal and sketches of debates for this convention and also to inquire into the expediency of providing for the sale of a sufficient number of the same to defray the cost of printing the journal and sketches."

Resolution No. 1, introduced by Mr. Case yesterday, was taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

Resolution No. 3, introduced by Mr. Ramsey yesterday, was taken up.

Mr. Richardson said that he looked upon laws regulating the rates of toll as an infringement of the rights of individuals; so also with regard to laws regulating the interest on money. They were no more fit subjects of legal enactment than the amount of profit which men might derive from any other species of property. As the resolution called for inquiry into this matter, he hoped it would be adopted.

The question was then put upon the adoption of the same, and was decided in the affirmative.

Resolution No. 4, introduced by Mr. Harvey yesterday, was taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

Mr. Judd moved that the journal of yesterday be read, which was agreed to. The journal was then read and corrected.

No. 4, article on banks and banking, was then taken up, when Mr. Beall moved to amend the article by substituting the following: "Section 1. The legislature of this state shall not have power to pass any law, either general or special, conferring banking privileges; and all banking by any person or persons, association, company, or corporation is forever prohibited within this state. It is hereby provided that at the time when the votes of the electors shall be taken for the adoption or rejection of this constitution an amendment shall be submitted to the people of this state, upon which a separate ballot may be given by every elector, to be deposited in a separate box. And if at the said election a majority of all the votes shall be given in favor of said separate amendment, then it shall be a part of this constitution, in full force and effect, anything in the constitution to the contrary notwithstanding. Said amendment shall be as follows, to wit:

"'Section 1. The legislature shall not have power to grant any special bank charters, nor any special banking privileges whatever, but associations may be formed for banking purposes under general laws.

"'Section 2. The stockholders in every bank and banking association shall be made individually liable for all its debts and issues during the time of holding their stock and for the term of six months after they shall have transferred the same. And in case of the insolvency of any such bank or as-

sociation, the bill holders thereof shall have preference in payment over all other creditors of such bank or association.

" 'Section 3. The legislature shall provide by law for the registry of all notes and bills put in circulation as money. And every corporation or association shall deposit with the proper officer, to be designated by law, ample security for the redemption of its circulating notes and liabilities to the amount of the stock of such corporation or association, either in stocks of the United States or of some paying state of the United States. Such stocks, when so deposited, shall be appraised at their market value in the city of New York and shall be reappraised upon the same basis annually during the continuance of such corporation or association: *Provided,* Such stock shall in no instance be appraised above par.

" 'Section 4. The legislature shall not have power to authorize any bank or association to suspend specie payments; and such suspension by any bank or association shall dissolve the same.

" 'Section 5. The legislature shall limit the aggregate amount of bank notes to be issued by all the banks and associations which may exist in this state.

" 'Section 6. Any law passed under the provisions of this amendment may be altered or repealed in such manner as the said law shall have been enacted, and in no other manner.' "

Mr. McClellan moved to amend the amendment by substituting the following:

"Section 1. The legislature shall have no power to pass any act granting any special charter for banking purposes, but corporations or associations may be formed for such purposes under general laws.

"Section 2. Every such law, before it takes effect, shall be published in at least one newspaper in each county of this state in which a newspaper is published, for ten weeks successively preceding the next general election, and at said election shall be submitted to a vote of the electors of this state, and if approved by a majority of all the votes cast at such election shall become a law.

"Section 3. Every corporation or association shall deposit within the office of the secretary of state ample security for the redemption of its circulating notes and other liabilities, to the amount of the stock of such corporation or association, either in stocks of the United States or of some paying state of the United States.

"Section 4. That such stocks, when so deposited, shall be appraised at their market value in the city of New York and shall be reappraised upon the same basis annually thereafter during the continuance of such corporation or association: *Provided,* Such stock shall not be appraised above par.

"Section 5. That all notes on paper issued by such corporation or association to circulate as money shall be made payable in gold or silver coin on demand at the place issued.

"Section 6. No such corporation or association shall issue any notes or paper to circulate as money that are not registered and countersigned by the secretary of state; and no such corporation or association shall receive or put in circulation notes or paper of an amount exceeding the appraised value

of its stocks deposited on security; and if such stocks so deposited shall become depreciated, such corporation or association shall be required to make a further deposit of stocks to the amount of such depreciation.

"Section 7. The individual property of the stockholders in every such corporation or association shall be liable for all debts of such corporation or association.

"Section 8. The legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments by any person, corporation, or association issuing bank notes of any description.

"Section 9. In case of the insolvency of any bank, corporation, or association, the bill holders thereof shall be entitled to preference in payment over all other creditors of such bank, corporation, or association.

"Section 10. Any law passed under the provisions of this article may be amended or repealed in such manner as the said law shall enact, and in no other manner whatever."

Mr. Chase said that the great variety of amendments and substitutes which were proposed to the original article reminded him of nothing more forcibly than of a vase of Egyptian vipers, each striving to get his head above the rest. It was the duty of every member of the convention to beat down these heads. He had been amused by the number of amendments offered similar to one another, if not in detail, in substance. One gentleman yesterday submitted a proposition substantially the same as those now offered and enforced it with a long (he was sorry he could not say very able) speech against banks and banking. The only gist of his argument was, so far as it referred to his proposition, that it was preferable to the original article inasmuch as gentlemen would not take stock in banks created under the latter, but would be likely to do so in those created under the former. Yet he enforced such a proposition with an argument against banking! He could not but be reminded of certain words of the favorite bard of Scotland:

O wad some Power the giftie gie us
To see oursels as ithers see us!
It wad frae mony a blunder free us,
An' foolish notion.

He was also amused to see the friends of banks in the convention (for such they were, whatever they might pretend) so much mortified on finding that the committee did not bring in a report whose provisions should take away from the people the privilege of having banks if they desired them. It distressed these gentlemen to find

their thunder stolen and themselves obliged to provide other. Their great object was to have banks, and they brought forward all the arguments their ingenuity could suggest to delude the people into a belief that banking could be made free and general. He could assure gentlemen when they aimed their staffs at the committee that they were invulnerable. He wished to see gentlemen on this floor take their true position. He had a sincere respect for those who from principle were in favor of banks, but as regarded the conduct of those who, while really in favor of banks and striving to provide for them, attempted to delude the people by arguing against them, he could not but consider it a system of hypocrisy.

As regarded the argument of the gentleman from Rock (Mr. Whiton)—how did his arguments and his action correspond? He proposed a system by which we can have banks, yet argued against them; and enforces his proposition by remarks on the subject of general banking at considerable length. Would any gentleman say that the system of banking adopted in New York conveyed more general privileges than special laws would? Was there any advantage in this system? If so, he hoped gentlemen would point them out and not pretend to say that a general banking system would extend its privileges equally to every citizen. They wanted no such sophistry. In all its forms it would be a special law; and in Michigan, particularly, it was such, for the benefit not of capitalists, but of speculators. In every case it has proved a system of swindling. In New York the system had not yet had time to develop itself—it would require a longer time there than in Michigan because a greater number of capitalists had engaged in it; but the result would be the same.

He was unable to say what position gentlemen on this floor would take on this subject. If one could judge by the remarks of some gentlemen, they would be found either not voting at all, or voting on both sides of the question. Sometime before this subject was disposed of, he hoped gentlemen would find themselves obliged to show their hands.

Mr. McClellan said that he had always understood that people laboring under some species of delirium were very apt to see serpents. The proposition made by him bore no analogy to the wildcat banking system of Michigan.

And pending the question thereon, Mr. Whiton moved that the article be recommitted to the committee of the whole, which was agreed to.

[Mr. Whiton was better pleased with some parts of the amendment than any proposition that had been submitted. He hoped every gentleman would meet this subject manfully. He did not think the country at present required banks. He felt that the vote on the old constitution was a virtual instruction that some provision should be made for banking.—*Tri-Weekly Express*, Jan. 13, 1848.]

The convention then resolved itself into committee of the whole for the consideration of No. 4, article on banks and banking, Mr. Sanders in the chair.

Mr. Kilbourn proposed to amend by substituting in lieu of the original article the following article on

BANKS AND BANKING

"Section 1. The legislature shall not have power to authorize or incorporate by special act any bank or other institution having any banking power or privilege; but in case the separate article entitled 'Free Banking,' which is appended to this constitution and submitted separately to a vote of the people for their adoption or rejection, should be adopted by a majority of the votes given on that subject, then and in that case it shall be lawful for the legislature to pass general laws on the subject of banking conformably to the provisions of said separate article; and said article, if so adopted, shall be a part of the constitution and shall be appended to and form a part of this article."

RESOLUTION TO SUBMIT THE ARTICLE ON FREE BANKING TO A SEPARATE VOTE OF THE PEOPLE

"*Resolved,* That the following article be submitted to the people to be voted upon separate and distinct from the body of the constitution. The votes given on that subject shall be deposited in a separate box and shall have on them, written or printed, or partly written and partly printed, the following words: 'For free bank article' on those votes in favor of its adoption, and 'Against free banking article' on those votes against the adoption of said article; and if a majority of said votes be 'for,' then said article shall be adopted; but if a majority of said votes be 'against,' then said article shall be rejected."

SEPARATE ARTICLE: FREE BANKING

"Section 1. The legislature shall have power to pass general laws for the purpose of authorizing corporations or associations to transact banking business, but all such laws shall be conformable to the following provisions in this article contained.

"Section 2. No corporation, institution, association, person or persons, shall issue any bill, note, or other paper in the form of bank bills, nor in any other form intended to circulate as money, except in pursuance of laws authorizing such issue passed and approved agreeably to the foregoing section of this article.

"Section 3. The legislature shall not have power to pass any law sanctioning in any manner, directly or indirectly, a suspension of specie payments by any person, association, or corporation issuing bank notes or notes for circulation as money of any description.

"Section 4. The legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money and shall require ample security in stock of the United States for the redemption of the same in specie.

"Section 5. In case of the insolvency of any bank or banking association, the bill holders thereof shall have preference in payment over all other creditors of such bank or association.

"Section 6. The stockholders in every corporation or association for banking purposes, issuing bank notes or any kind of paper credits to circulate as money, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association for all its debts and liabilities of every kind."

Mr. McClellan offered his substitute for that offered by Mr. Kilbourn.

The amendments having been read by the secretary, Mr. Judd asked for a division of the question on Mr. McClellan's substitute so that each section might be submitted to the committee separately. Mr. Chase thought such a division would not be in order. The substitute was an amendment to an amendment. It seemed therefore impossible to adopt part and not the whole. He well understood the dilemma in which the gentleman from Dodge was placed, but he could not get out of it that way. The substitute was a single, individual proposition.

Mr. Kilbourn said he had offered a substitute to the original proposition, to which an amendment was offered by the gentleman from Racine (Mr. McClellan). He proposed to review in a very few words the several propositions but did not propose to discuss the question of banking on its merits. Public opinion required one of two things. It was expected either that the convention would adopt some general provision in reference to banks, or that it would not. His own opinion was that public opinion did demand an expression on this subject from the convention and a provision which should permit banking. The question was how should this be done. It was clearly expected that some restraining provision should be adopted to prevent "free" banking. It became the duty of the convention to adopt a provision restraining it either entirely or in part. If they adopted the first two lines of the first section and struck out what followed, they would entirely close the door on domestic banking. He did not believe that the people expected that of the convention. They expected some system of banking from it.

Something had been said—not so much in this convention as in the previous one, and in the public press—but something had been said here about "bank men" and "bank Democrats." On this subject he was perfectly willing to show his hand now. So far as concerned any interest which might be supposed to influence him he was willing to state that he had never had any interest in any banking establishment; he had never had any occasion for bank accommodation. He made it a principle never to be in debt to anyone. He did not consider bank stock as a safe or profitable investment; and if he were obliged to borrow he would prefer having recourse to his friends rather than to banks. It was true he had once been so obliging as to lend his name as an endorser on bank paper, and he had been obliged to pay some three thousand dollars in consequence. Many might suppose that on this account he would be an enemy to banks. It was not so. What he had done in that matter, he had done from the dictates of his own judgment. So far as personal feelings were concerned, if he had any at all upon the subject, they would probably be enlisted against banks. But he had no personal feelings about the matter. He viewed the whole subject entirely with regard to public sentiment and the public interest. He thought a system of banking might be adopted which would be a public benefit. Not that he thought a system could be adopted which would enable everyone to obtain a loan. He was aware that it was a com-

mon argument against banking institutions, that all could not be accommodated with loans and therefore that all could not be benefited by them. He held that whatever tended to promote the business interests was for the general good of the country. Merchants could obtain money on better terms from banks than from brokers; and by paying a lower price for their capital they could pay a higher price to the producer. The very fact of the existence of producers and dealers begat the necessity of an intermediate class to furnish capital.

He deemed the proposition which he had submitted to the convention and also that submitted by Mr. McClellan to be preferable to the article as reported by the committee. He did not yet know which of the two propositions he should prefer. The article as reported by the committee contained, in its outset, a special privilege. Now if there was any one thing which the Democratic party has especially opposed for the last twenty years, it was this principle of special privileges; and for the last ten years opposition to it has been a cardinal maxim. The committee in agreeing upon that article had leaped over a great barrier against private fraud and public peculation. This might be regarded as the entering wedge to break down this barrier. Here was the principle acknowledged, that banking in the hands of certain individuals who shall be designated by the legislature was a benefit. But it was urged that all danger was guarded against by submitting the proposition to the people—that there was no danger in special privileges if the matter was left to the people. He believed that if once this principle was established by the convention, composed as it was, two-thirds of it of Democrats, the people would soon ask, "If this principle is right, why not vote for it?" No one could say but that in the course of a few years the people might, under the pressure of some extraordinary exigency, be induced to vote for an institution under the provisions of the article. If such a thing should happen, we should have one great mammoth institution and at the same time have provided that we should have no more—a colossus, with no little images to surround it. We should be obliged in self-protection to amend the constitution so as to adopt some principle of free banking, in order to shear this colossus of some portion of its power. It was better to begin right in the first place. It was used as a weighty argument against the old constitution, that it was more difficult to amend a bad constitution than to make a new one.

If there was any matter on which extreme caution should be used it was the monetary affairs of a country. The tendency of all legislation had been to build up monopolies in this particular, but to discourage them in every other respect. Why make this an exception? Leave it free like other matters, and let those engage in it who can. It was not every capitalist who would engage in banking; other fields were open to men of capital.

There was one important point upon which the report was entirely at fault; that was in asserting that banking was wrong in itself, wicked, and abominable. One gentleman on this floor—and he was the chairman of the committee which made the report—even compared the amendments which permitted banking to so many vipers striving which should get their heads the highest. Now if this idea was correct, the gentleman should have stopped, and the committee should have stopped at the first section of their article, and declared that no system of banking should be permitted. Instead of doing so, they went further and prescribed a mode by which banking should be allowed. If banking were right at all, it should be thrown open to competition; if wrong, we should have none of it.

Mr. Kilbourn said that he thought he had shown that the principle embodied in the original article might lead to the incorporation of a mammoth institution. If so, it should be surrounded with some guards. But it did not provide for any specific responsibility to guard the interests of the public. Individual responsibility consisted more in sound than in sense. How easy it would be, as was done in the case of the wildcat banks of Michigan, for stockholders to shuffle off the responsibility and put it on the shoulders of men of straw. Generally, however, we have found these frauds perpetrated in the first place by men of straw, who have kept up the credit of their institution for a season by having a sufficient quantity of specie in their vaults, until they have spread their notes among the people to a sufficient amount to answer their own purposes. The bank is then closed, and the stockholders found worthless. It was not safe to rely on individual liability at all, but on specific securities which should be pledged. Let these securities be ample. It was the matter of "bank issues" over which legislation was required to keep a guard. If there should be just as many dollars or the same amount of United States stock deposited with the state treasurer as there were dollars issued, the issue must be

safe. The other transactions of the bank would be with men of business, and they must judge of the responsibility of the institution. But the business of legislation was to protect the community by making the issues equivalent to gold and silver. When legislation had done that, it had done its whole duty.

Whatever system should be finally adopted should contain ample guarantee for the security of all issues. This great feature was to be fully considered; when this was done, it was of very little moment what the other provisions might be. When it was so arranged that no fraud could be perpetrated, all the sum and substance of their duty was discharged. The proposition which he (Mr. Kilbourn) had submitted abundantly guarded this point; and as to any difference of opinion among members as to whether banks shall be allowed to be chartered or not, that would be decided without reference to detail. As to the matter of submitting the article separately to the people, it was to be considered that there were a great many persons in the territory who, like the gentleman from Fond du Lac (Mr. Chase), were ultra in their views and would oppose anything in the shape of a bank, at all times and under all circumstances, and would vote against any constitution which provided for banking. It was politic, therefore, to submit the article separately to the people, so that all would have an opportunity to vote for or against the constitution without reference to that. The proposition presented by Mr. Beall contained this feature. The others did not. His (Mr. Kilbourn's) first proposition provided that the article should be incorporated into the constitution, reserving to the people the power of approving or disapproving of any law passed by the legislature on the subject. But it was thought best to make it a separate article, as it was the opinion of many that there were those who were so decidedly opposed to banks that they would not vote for any constitution which made any provision for them.

Mr. Kilbourn said that he had only to add that he was opposed to the proposition of the committee in toto. It was all wrong. It commenced with declaring the views which the committee really entertained and went on to propose a measure in direct contradiction to those views. He was not prepared to charge upon the committee an intention of forestalling all action on the subject of banking; but such an intention was attributed to them by many who felt very indignant at what they conceived to be their course. Mr. Kilbourn said that he would for the present withdraw his

proposition, to give gentlemen an opportunity of examining the subject in detail.

Mr. Beall offered as an amendment, in committee, the same proposition which he had previously offered in convention, and spoke at some length in support of it.

Mr. McClellan offered his amendment as a substitute to Mr. Beall's.

[Mr. Beall preferred his proposition to that of the gentleman from Racine (Mr. McClellan) because it proposed a separate submission of the general banking law to the people. He was himself, under all circumstances, an antibank man; and the more he considered on the subject the better convinced he was that he was right. He spoke at considerable length and with great warmth against every system of banking and closed with a strong appeal to those opposed to banks to take the stand for a separate submission. He said, "Let the matter come before the people, and there we can whip it; if not, let it be well guarded. But let us go against a bank article in the constitution either general or special."—*Tri-Weekly Express,* Jan. 13, 1848.]

(Mr. Kilbourn having withdrawn his amendment, Mr. McClellan's, as an amendment to that amendment, was withdrawn with it and must be offered again.)

Mr. Martin hoped the gentleman from Racine would withdraw his substitute and allow him to offer an amendment to the original article.

Mr. McClellan withdrew his proposition. Mr. Martin then moved to amend the original article by striking out everything after the word "whatever" in the first section. He said that he found that every gentleman who had spoken on the subject, both in committee and in the convention, had taken ground against banks. In order to put the matter on its proper ground, he now proposed an amendment which would enable gentlemen who were opposed to banks to vote against them, and those who were in favor of them to vote for them. The naked question would be before the convention; and gentlemen would know upon what ground to stand.

Mr. O. Cole said he was glad that after beating about the bush so long they had at last got fairly into the question of banking. He would vote in favor of Mr. Martin's amendment and would be found to sustain the ground covered by it, whatever propositions might arise. The system that had thus far been pursued in the dis-

cussion of this matter was an extraordinary one. Gentlemen matured propositions in their rooms and sprung them suddenly upon the convention. Members were called upon to express their views and to vote upon these propositions after having merely heard them read at the clerk's desk. Now he would submit it to every intelligent person, whether he was able to form any idea of a proposition by simply hearing it read in this manner. He, for one, must confess his inability to do so.

The question now before the convention was reduced to the simple proposition whether the legislature should have the power to grant banking privileges. He for one would say that it should not. If this proposition was not sustained, he would fall back on the proposition of Mr. Beall, to submit the matter to the people. It had been correctly remarked that members would now have an opportunity to speak as they thought. They could not now have the privilege of speaking both for and against banks.

He hoped the gentleman from Rock (Mr. Whiton) would adhere to his principle of separating entirely all government interests from banks. The sooner that currency and legislation were divorced, the better. That gentleman had said that he would go against all this matter of banking, if we had a sound public sentiment on the subject. How shall we ever have a sound public sentiment if we go on tampering with the disease? It was no mode of medicinal practice to cure a distemper by stimulating and fostering it. He believed the system of banking would regulate itself if left to its own operation. There was no necessity of granting to the legislature any power to charter banks. If we have not a sound public sentiment on this subject now, the sooner we have it the better.

The gentleman from Fond du Lac (Mr. Beall) had said that there would be an advantage in having a bank within the state, to keep out bank paper from other states. He (Mr. Cole) regarded this as an unsound argument. The object of all banks was to circulate their paper beyond the limits of the state, so as to have a longer time for redemption and to avail themselves of the chance of their bills being lost or destroyed. We might establish a bank in every neighborhood, and bank paper from abroad would still be forced upon us. The volume of bank paper would not be restricted by prohibition.

Mr. Chase said he had hoped when his colleague (Mr. Beall) took the floor he would not have favored the committee with another long argument deduced in its principles from Say's *Political Economy,* Adam Smith's *Wealth of Nations,* or Mr. Cambrelling's *Political Dissertations,* delivered evidently for home consumption. This he believed from the only means of judging he possessed, internal evidence and the fact that the gentleman represented an antibank constituency. He (Mr. Beall) by his proposition first opened the door to the worst kind of wildcat banking and then made a speech against banking and bank currency and in the very same breath spoke of hypocrisy! The old adage was forcibly brought to his mind: "Who looks through maudlin eyes, sees everybody drunk." He wished to advert to a single remark made by the gentleman from Milwaukee (Mr. Kilbourn) that "whatever promotes the business of a country contributes to its welfare." He thought this a singular position for that gentleman to assume, when he so well knew that business was promoted in 1836 beyond all calculation by banks and banking.

Mr. Beall made some remarks in reply.

The committee then rose and by their chairman reported progress and asked leave to sit again thereon. Leave was granted.

On motion of Mr. King the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

The convention resolved itself into committee of the whole for the further consideration of No. 4, article on banks and banking, Mr. Sanders in the chair.

The vote on the motion of Mr. Martin to strike out all after the word "whatever" was taken, and the motion prevailed.

Mr. Judd moved to strike out from the first section the words "general or." The motion prevailed 31 to 13.

Mr. A. G. Cole offered an amendment, and Mr. McClellan renewed his motion for his substitute. After some discussion upon points of order and the priority of business, Mr. A. G. Cole withdrew his amendment.

The question being on the amendment offered by Mr. McClellan, Mr. Judd made some remarks.

[Mr. Judd said he thought it must be apparent that they had got into a field from which it would take a long time to get out. In the

main principle men do not seem to differ much; but in the detail there is a great diversity of opinion. Individually, he would prefer to let the article remain as it is; but out of deference to the will of the people he would adopt a single section authorizing a general banking law, and let the legislature provide all the checks necessary, and submit the law to the people for their acceptance.—*Tri-Weekly Express*, Jan. 13, 1848.]

Mr. Chase, to get the subject in order for intelligent action, moved that the committee rise and report all the different amendments which have been offered, to the convention, and then he would move to have them all printed. That would give the convention an opportunity to get the whole before them in a way that they could understand them, and he did not think it could be done in any other way. Mr. King hoped the motion would not prevail. It would take three or four days to print them, and it would be useless waste of time. He thought there would be no difficulty in understanding and passing upon each proposition as it came up in order. Mr. Chase said it would cause no delay, as the convention could go on with other business.

Mr. Judd spoke in opposition.

[Mr. Judd said he hoped the committee would not agree to the motion; it would be imposing a large amount of printing upon the printers of the convention, and out of respect to them, as they do the work so cheap, he would oppose the motion.—*Tri-Weekly Express*, Jan. 13, 1848.]

Mr. O. Cole hoped the committee would not rise. There were doubtless other amendments to be proposed; indeed from the indications he saw he thought every member had a distinct plan of his own to propose. The war between the different propositions was as fierce as that between Typhon and the Gods; and Pelion had been heaped upon Ossa already in the way of amendment. He thought if any of the amendments were to be printed they should all be, but he did not think it was worth while to print any of them. Mr. Jackson hoped also the committee would not rise and order the amendments to be printed. The motion was lost.

The question then being on the amendment offered by the gentleman from Racine (Mr. McClellan), Mr. Jackson suggested that as there were a large number of amendments it might expedite business to adopt some one of them and report it to the convention, and thus have something definite to act upon.

The question was then taken on the amendment of the gentleman from Racine, and was lost.

Mr. Whiton offered the following amendment: "Strike out the whole article and insert as follows, to wit: 'The legislature shall have no power to grant any special bank charters nor any special banking privileges whatever and shall pass no general banking law which shall take effect until the same shall have been submitted to the people of the state at some annual election, in such manner as the legislature shall provide, and shall have been approved by a majority of all the votes cast at such election.'"

Mr. Whiton spoke at length in favor of this amendment. Mr. Beall spoke in reply.

[Mr. Whiton said he offered this as a substitute for all the articles presented. He was opposed to special banking laws and was willing to prohibit them, but was in favor of a general banking law whenever the people wanted it. He did not think that banks were at present needed; and he was free to say that were he a member of the legislature now he would oppose the passage of such a law; but he thought it was a bold business to declare that the people shall never pass such a law. His amendment did not go at all into details, but had left them entirely with the legislature, believing that to be the proper authority for carrying out the details. No law can take effect until it goes before the people. He was opposed to a separate submission of this article, but wanted to submit a constitution distinctly to the people—if they like it, let them adopt it; if not, let them reject it. He was not afraid that the power to create a bank thus guarded would be abused, and he did not believe that the people would vote for a law that was not properly guarded. He would ask gentlemen if they hope to exclude the circulation of all bank paper in the territory; it cannot be prevented. Banks of other states will send their paper here, and we will take it. Those who favor a hard currency may regret this but they cannot prevent it. It is not wise, just, and honest, then, to leave it with the people to decide what paper they will have, whether that of other states or that of their own.

Mr. Beall said he had great respect for the opinions of the gentleman from Rock (Mr. Whiton) but in this respect he could not agree with him. It was expected by his constituents that there would be some landmarks laid out. He was for laying down the

principles and letting the people vote on them when they vote on their fundamental law.—*Tri-Weekly Express,* Jan. 13, 1848.]

Mr. Estabrook said he would have been content with a silent vote on this subject, were it not that he had received a number of communications from his constituents in regard to it. He said he felt somewhat like the man who escaped from the lunatic asylum, who said it seemed to him that everybody was crazy. The Whigs and bank men of this convention were frantic with joy at the hope that this Gorgon is to be fastened upon the body politic; and the antibank men are taken aback with fear that so dreadful a calamity may be consummated. There were three propositions before the convention, one of which was to prohibit banking altogether. Individually, he was in favor of this, and so he believed were three-fourths of the members of the convention, at heart. But there were many who thought directly the contrary—that our whole salvation as far as business was concerned depended on having banks. Out of respect to these he was willing to yield somewhat. He was willing so to provide that their views might be consulted, and allowance made for them in our present arrangements, and if they should ever come to prevail, that they might be carried out in the form of law. How far, then, should we go? Should we leave the whole matter in the hands of the legislature—leave the whole field open? That would be democratic. Some gentlemen talk a great deal about democracy; but their course shows that they have not the unbounded confidence in the people that they profess. Why not do this, then? For this reason, sir. There is something sly and insidious in the money power, which needs to be guarded against. The oysters, and good cheer, and smiles of bank men are able to corrupt the legislature, as experience has abundantly shown. Now, if the mischief done by one legislature could be undone by another, the danger would not be so great—the struggle so unequal; but when in an evil hour a charter has been granted for twenty or thirty years, the bankers can stand upon their "vested rights" thereafter and defy legislation till the time expires.

There are two other methods proposed—a general banking system, and special charters. Mr. Estabrook repudiated wholly the general banking system. It was the greatest of all humbugs. As to the other, the majority of the committee had reported in favor of giving the legislature the power to charter banks, provided they should not be of any validity unless sanctioned by a majority of the

people. What objection had gentlemen to this? They say that it is a mere ruse—that it holds out the appearance of allowing banks and yet effectually prevents the establishment of any. If it does, why does it? It can only be because the people condemn them—a good and sufficient reason. Shall not the people rule? No, say the gentlemen. They say, in effect, give us a means of doing indirectly what the people will not allow us to do directly. They want a banking system which shall give an equal chance to all, the poor as well as the rich! It is singular that poor men should have so many friends on this floor, and that bank men should be the most zealous of them at this time! Sir, the idea of getting up a banking system for poor men is a gross humbug, got up only to mislead and lure us on to destruction. In the words of my old friend Shakespeare,

> The earth hath bubbles as the water hath,
> And these are of them.

I said this project of free banking, though advocated under the specious cry of "equality" and "poor man's rights," was in reality a scheme for defeating the will of the people, and thus I demonstrate it. Suppose the legislature should pass an act incorporating a bank in Milwaukee, specifying all the privileges granted, the securities required, the persons who were to control it, etc., and should then submit it to a vote of the people. Gentlemen admit—yes, and complain—that the people would undoubtedly vote it down. Then suppose a general banking law were submitted to the people, and the activity and combined effort of all the sharpers in the territory should be able to prevail over their inattention and inactivity, as gentlemen seem to think they might, and it should be carried through. The same persons, then, in Milwaukee, whom the people would not have trusted with banking privileges, if they could have voted upon it directly and specifically, or any others far less trustworthy, might then form themselves into a bank in opposition to the will of the people. Thus the will of the people is defeated; or, at least, they have been trapped into admitting in general and indefinite terms what they would have rejected if presented to them in a definite and specific form.

No one of the advocates of banks has been able to tell us why, if we are to have banks, they should not be created by special laws. The gentleman from Rock says the age of special charters is past. True, and why? Because special charters, submitted as we propose

to a vote of the people, after the experience they have had in bank operations, cannot pass. He cannot frighten them with the odious term "special." Call them what you please, the object is merely to submit definite propositions to the people, instead of general and indefinite ones. The gentleman inquired if banking was not a legitimate business, and he seemed to think that if any of our citizens wished to go into banking they had a right to, as well as into any other business. Mr. Estabrook said he would not pretend to say absolutely that banking was not a legitimate business, but he would say that it did not stand on the same ground as other business. It was not a matter which concerned bankers wholly or chiefly. The establishment of a system of banks among us would cause a revolution in all our business affairs. It would banish specie and substitute paper. The price and the kind of pay which every man should receive for his property or labor were involved in it. All are interested in it deeply—not the man who issues the picture, merely, but the man who gives his bushel of wheat for it. All, then, should have a fair chance to express their opinions in regard to its establishment, and if the public voice is against it, it should be prohibited.

Mr. Estabrook said that he would go against any plan of free banking, but out of respect to those of his constituents who differed with him on the general question of banking, he felt it his duty to go for some such plan as that proposed by the majority of the committee. But why would not gentlemen who were opposed to all banks and whose constituents entertained the same views carry out their principles? They say they are warned by the fate of the old constitution that the people in general are not in favor of it. Mr. Estabrook said he did not think the vote on the old constitution should be so interpreted. He had taken an active part in the canvass on that instrument, and never but once did he hear any speaker oppose the constitution on account of the prohibition of banking in it. One gentleman—one of the most eloquent of the Milwaukee bar—had ventured to take that ground, but he was almost hissed down by the crowd; and some Whigs were among the most clamorous in their manifestation of disapprobation. He had seen nothing in the vote or canvass on the last constitution which should induce any antibank man to go against his honest conviction upon this subject. As for himself, when he had provided that bank charters might be submitted to the people, he believed he had conceded all he ought.

The gentleman from Rock had said that we were bound to have some bank paper among us, and then inquired whether we should have it from abroad or from institutions within our control. On the same principle, as we are bound to have the smallpox among us, should we generate the disease at home, to keep out that from abroad and thus have it where we could control it? No, sir. Let us prevent it wholly at home, and thus, if we must have the evil amongst us, have it in a mitigated form. If a foreign bank should break, we would lose comparatively little by it; but if a bank among us should break, it would carry derangement and ruin to our business far and wide. Let us then do what we can to avert the evils of banking from our territory; and we may be sure that, though we cannot do all we desire, or which should be done, we can do very much towards it.

Mr. Whiton spoke in reply.

[Mr. Whiton replied briefly. He wished gentlemen would show their hands; for his part he had no opinions to conceal. He said the gentleman might call the general laws humbug or what he pleased; he considered them infinitely superior to special bank charters.—*Tri-Weekly Express*, Jan. 13, 1848.]

Mr. Kilbourn called for the reading of the amendment. It was read. Mr. Kilbourn said it read as he had supposed at first, but the course of remark upon it had led him to suspect that he might be mistaken. The gentleman from Walworth had yielded the whole ground. He had said he was willing to leave the question in the hands of the people, but not in the hands of the legislature. The amendment contemplated a submission to the people, and the gentleman would therefore vote for it according to his own principles. He presumed there would be no danger in any system which had received the sanction of the whole people. They could not be deceived or carried away by any sudden excitement, as a small number might. The law could be carried only by an appeal to reason. The gentleman, then, having yielded all the amendment proposes, as far as principle is concerned, the question arises in what way the matter could best be submitted to the people. Believing that the granting of exclusive privileges was wrong in principle, Mr. Kilbourn said he could not himself support the plan proposed by the majority of the committee. The gentleman probably thought that with such a provision no charter could ever be obtained, because sufficient interest could not be excited generally throughout

the territory to procure a majority of the votes cast for the establishment of a bank at any one point. If the gentleman wanted to prevent the obtaining of any bank charter, as he evidently did, he should have gone for it in direct terms. True, he says he goes for a banking system to meet the wishes of his constituents; but he does not do it in reality. The course he has proposed to himself is a way of evading the question. It holds out the appearance of conceding to the wishes of his constituents, while in reality it precludes, and is intended to preclude, the possibility of carrying out their wishes. This is unfair dealing. If the gentleman for any reason is willing to concede anything to the wishes of his constituents, he should do it in reality and in good faith—not delude them with an empty show. But, suppose it were possible to obtain bank charters under the plan proposed by the gentleman. The question arises, is the kind of bank which would be thus obtained the best. Would it suit the gentleman himself best? Mr. Kilbourn said he hoped not. It was easy to see that there might be better. The gentleman, then, went against general banking because that plan would be too easily carried, and in favor of special charters because they would be almost impossible to be obtained, both from the restrictions imposed and the fact that the system itself would be a bad one. This was not a fair, manly way of meeting the question; and it was unjust to the people, as it really left them but a choice of evils.

The gentleman had asked how poor men were to be benefited by banking. It was not expected by those who advocated banks, as gentlemen seemed erroneously to have supposed, that poor men would be directly benefited by engaging in it and sharing its benefits themselves. It was not expected that poor men would be bankers; nor was it expected that they would be merchants, or mechanics, or farmers, unless they had the requisite means for engaging in those pursuits. Banking had been done by very poor men in Michigan and some other states; but the result did not show that such a thing was desirable. In the plan now proposed it was required that full security shall be lodged for every dollar issued. The bill holders were so secured that they could not possibly lose anything. It would be a convenience to the business of the country to have such a system—a convenience to poor men, too. It is admitted that the increase of the currency raises prices, and some regard this as an objection, and some as an argument in favor of banking. Such a rise in prices in the territory would certainly be a benefit to poor

men. Their labor, their wheat, their land would rise in value; but merchandise and imported articles would not rise at all in proportion. Whatever, then, conduces to the facilities of business improves the condition of labor and benefits the poor man. Mr. Kilbourn said he had stated this proposition before, and he believed it correct, and he would support the substance of the amendment under consideration as he believed it would establish a system which would promote the business of the country. It might be said that we should leave the whole subject to the legislature. He did not think so. He would lay it down in the constitution for the benefit and information of the people that they might know what was the system which was established and what restrictions were imposed. There should be some bounds fixed. It was wise and prudent to guard the legislature and define their powers with particularity. New York had done this in the constitution she had just adopted. The provisions she had adopted in relation to banking were the same as those contained in his amendment. His amendment was copied from the New York law. But he had inserted an additional restriction, restraining banks from making any issues unless authorized by law. This was a great and essential restriction and was found in no proposition but his own.

Mr. Chase, before the question was taken on the amendment, wished to inquire of the gentleman from Rock whether by his amendment as he designed it the legislature would have power to grant a special bank charter or not. He was not able himself to tell from the reading. Mr. Whiton said he had no design but what appeared on the face of the amendment. It spoke for itself.

Mr. Chase said he understood then that the power was taken away from the legislature to grant any special act of incorporation. Now we had been told very solemnly by the gentleman from Rock that it required a bold man to stand up here and advocate taking away from the people the right or the power to legislate upon the currency in any way they pleased. This was brought up as a strong argument against placing any restriction or prohibition in the constitution. And now the gentleman himself proposed by his amendment to take away from the people or their representatives the power to grant special charters. Did it not require an equally bold man to advocate this? And could not all the gentleman's arguments be turned against himself? Why was it that gentlemen were so opposed to submitting special charters to a vote of the people and

so eager for a general banking law? It was easy to see that the only reason was because they thought they could carry their ends in the latter form and not in the former. To get banks established was their only object, and they considered only what was the most feasible plan of accomplishing this. Gentlemen had acknowledged that the rich only could engage in banking whether general or special—that they would receive all its direct profits and privileges. Did the people want us to place in the constitution a provision for the benefit of the rich? It was our duty to guard the interests of the people, and this would be to betray them.

Mr. Kilbourn said, in answer to the inquiry of the gentleman from Fond du Lac why he and others were opposed to submitting the question to the people in the form of a proposition for special charters, he would say for one that it was because that system had been repudiated by the Democratic party for the last twenty years. Mr. Chase inquired if they had not equally repudiated all banking. Mr. Kilbourn said they had not and instanced the state of New York, where a Democratic convention had just provided for a system of free banking.

Mr. King said that he desired to state one fact in addition to what had fallen from his colleague and in answer to the question of the gentleman from Fond du Lac whether the Democratic party had not repudiated banks and banking in every shape. The general banking law went into operation in New York in 1838 and was adopted as a substitute for the corrupt safety fund system, the system of special bank charters now proposed to be revived here. This general law had been in operation nearly nine years when the convention assembled in New York last year to amend the constitution. The majority of that convention were of the Democratic party and of that "progressive" school, moreover, to which the gentleman from Fond du Lac claimed to be attached. Yet in that convention, thus composed, a naked proposition to do away with all banks received but 10 out of 128 votes. And the general banking law, after nine years' experience, was continued and confirmed by an equally emphatic vote.

Mr. Doran said he would vote for the amendment and would vote afterwards to amend it.

The question was then taken and decided in the negative, 19 to 32.

The committee then rose and by their chairman reported progress thereon and asked leave to sit again. Leave was granted.

On motion of Mr. Larkin the convention took a recess until seven o'clock P.M.

SEVEN O'CLOCK P.M.

The convention resolved itself into committee of the whole for the further consideration of No. 4, article on banks and banking, Mr. Sanders in the chair.

Mr. McClellan moved to amend by limiting the amount of bank notes which might be issued within the state. Mr. Kilbourn could not see the necessity of the amendment. The legislature could not tell what amount of capital might be needed for the business of the country. They might as well attempt to limit the amount of capital which should be invested in merchandise, manufacturing, or any other kind of business. He thought it should be left to be regulated by the business demands of the country, and to be increased or diminished as its trade and other circumstances might require. He regarded the amendment as perfectly futile and hoped the gentleman would withdraw it. The amendment was withdrawn.

Mr. Jackson moved to amend by striking out the section providing for the separate submission of the article, which was decided in the negative.

The committee then rose and reported the same back to the convention with an amendment.

Mr. Kilbourn moved to amend by substituting in lieu of the original article the following:

BANKS AND BANKING

"Section 1. The legislature shall not have power to authorize or incorporate by special act any bank or other institution having any banking power or privilege; but in case the separate article entitled 'Free Banking,' which is appended to this constitution and submitted separately to a vote of the people for their adoption or rejection, should be adopted by a majority of the votes given on that subject, then and in that case it shall be lawful for the legislature to pass general laws on the subject of banking, conformably to the provisions of said separate article; and said article, if so adopted, shall be a part of this constitution and shall be appended to and form a part of this article.

RESOLUTION TO SUBMIT THE ARTICLE ON FREE BANKING TO A SEPARATE VOTE OF THE PEOPLE

"*Resolved*, That the following article be submitted to the people to be voted upon separate and distinct from the body of the constitution. The votes given on that subject shall be deposited in a separate box and shall have on them written or printed [or partly written and partly printed] the following words: 'For free bank article' on those votes in favor of its adoption, and 'Against free bank article' on those votes against the adoption of said article; and if a majority of said votes be 'for,' then said article shall be adopted; but if a majority of said votes be 'against,' then said article shall be rejected."

FREE BANKING

"Section 1. The legislature shall have power to pass general laws for the purpose of authorizing corporations or associations to transact banking business; but all such laws shall be conformable to the following provisions in this article contained.

"Section 2. No corporation, institution, association, person or persons shall issue any bill, note or other paper in the form of bank bills or in any other form intended to circulate as money, except in pursuance of laws authorizing such issue, passed and approved agreeably to the foregoing section of this article.

"Section 3. The legislature shall not have power to pass any law sanctioning in any manner, directly or indirectly, a suspension of specie payments by any person, association, or corporation issuing bank notes or notes for circulation as money of any description.

"Section 4. The legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money and shall require ample security in stock of the United States for the redemption of the same in specie.

"Section 5. In case of the insolvency of any bank of banking association the bill holders thereof shall have preference in payment over all other creditors of such bank or association.

"Section 6. The stockholders in every corporation or association for banking purposes, issuing bank notes or any kind of paper credit to circulate as money, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association for all its debts and liabilities of every kind."

Mr. Kilbourn remarked that there had been several propositions presented, no two of which were in all respects alike; and as this differed somewhat from all the rest, he would point out its peculiar features. In the first place he proposed to insert a section prohibiting banking of every description, unless the article submitted separately should be adopted; in which event the legislature might pass general laws upon the subject, and the provision placed

in the constitution would so far become inoperative. But if the separate article should be rejected, the section proposed to be incorporated into the constitution would be and remain in full force against all banking. This would bring the question of bank or no bank directly before the people, and that he supposed was what they all wanted. If the people decided in favor of banks, he was not one who would say they should not have them. If they decided against them, he was willing they should be prohibited in the constitution.

Mr. McClellan wished to inform the gentleman from Milwaukee that the article as it then stood prohibited banking in case the article proposed to be submitted separately should be rejected. Mr. Kilbourn thought it did not. The President read the provision of the article on that point. Mr. Kilbourn said it might be intended to cover the same ground, but this provision was so entangled with the other provisions of the article that it was, to say the least, doubtful whether any part of the article could be rejected without rejecting the whole. At all events, voters could not be likely to know what part of it was to be voted upon, and what not. The substitute he had offered placed these propositions in perfectly distinct positions, so that they could not possibly affect each other any further than they were intended to do so as the result of the popular vote. But he would pass over this part for the present.

Another feature peculiar to his proposition was that it required specific security for the notes issued, in United States stock. If state stocks were allowed as security, it would be comparatively insecure. State stocks had depreciated very materially and were always liable to depreciate more or less according to the financial circumstances of the country. If Ohio or even New York stocks were allowed as security they might so far depreciate as to subject bill holders to a loss, but United States stocks could not depreciate. If there was any security which could be regarded as perfectly safe, it was the paper of the federal government. Again, the stockholders were personally liable to the extent of the amount of stock they might own. Herein consisted the safety of the plan he proposed. Before a bank could go into operation under these provisions, it must deposit United States stocks equal to the entire amount of bills issued. The stockholders were in addition to this made personally responsible for the debts of the institution to the full extent of their interest in the bank. This security he did not

claim would be sufficient to cover all the responsibilities of the bank, for it might at times have a million of dollars on deposit, while the aggregate responsibility of the stockholders might not exceed three or four hundred thousand dollars; but it would cover the issues and secure the bill holders against the possibility of loss; and the best security for deposits was the reputation of the institution. He had pointed out three distinct features which were peculiar to the substitute and upon which he had chiefly depended to recommend it to the favor of the convention.

Mr. Chase had an amendment to the matter proposed to be stricken out, which he thought was entitled to precedence. The President decided that the substitute must first be disposed of.

And pending the question thereon, Mr. Beall moved that the convention adjourn, which was agreed to. And a division having been called for, there were 32 in the affirmative and 15 in the negative. So the convention adjourned.

WEDNESDAY, JANUARY 12, 1848

Prayer by the Rev. Mr. Penman.

The journal of yesterday was read.

Mr. Fowler, from the committee on incidental expenses, reported the following resolutions, to wit: "*Resolved*, That the president and secretary of this convention are hereby authorized to issue a certificate to J. G. Knapp for $220, to pay incidental expenses incurred by him for this convention.

"*Resolved*, That the superintendent of territorial property is hereby requested to furnish the members of this convention with such stationery as they may prefer to require to the extent of the appropriation made by the legislature for that purpose."

Mr. Sanders objected to the resolutions. Mr. Case explained that the object of them was to enable the committee to audit the accounts of the superintendent of public property and to enable him to furnish such stationery as was needed by the convention. Mr. Sanders said the reasons assigned by the gentleman from Waukesha convinced him still more strongly of the necessity of examination. If the superintendent of public property had exceeded the appropriation made for stationery it was proper for the convention to look into the matter.

Mr. Case moved that the fifth rule be suspended for the consideration of said resolutions now, which was agreed to. And a division having been called for, there were 28 in the affirmative and 10 in the negative.

Mr. Sanders moved that said resolutions be laid on the table. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 23, negative 37; for the vote see Appendix I, roll call 86].

Mr. Whiton spoke in opposition to the resolution and stated among other things that the accounts of the superintendent contained a charge of $138 for paste furnished to members of the convention. Mr. A. G. Cole hoped the resolution would not be adopted and agreed with the views expressed by Mr. Whiton. He said he decidedly objected to the idea of carrying home such miserable paper as was furnished here.

Mr. Reed differed from Mr. Whiton. He thought that the matter formed a proper subject of inquiry here. The legislature would have no means of auditing the accounts of the superintendent. It was true that the members of the convention had not had the proper supply of stationery. Now if there was any fault in this matter it was the business of the convention to determine where the fault

lay. The legislature had made a liberal appropriation for stationery; and it was the business of the convention to inquire how this appropriation had been expended. The matter should be put in such a position that the superintendent should not get paid for what he had not furnished.

Mr. Sanders said that he saw by the report that only one-half of the appropriation had been expended for stationery. If the balance had been expended for other purposes the convention ought to know it. As for the stationery, members wanted no more of it than was necessary to be used here. It was too poor to be worth carrying home.

Mr. Fowler, as chairman of the select committee to which was referred the resolution of inquiry relative to the amount of stationery, etc., read a communication from Mr. Knapp, the superintendent. He said that in examining Mr. Knapp's account he found that a considerable portion of the amount expended was for articles which did not come under the head of stationery, such as door locks, chimneys for lamps, etc., etc., all of which the committee had disallowed.

Mr. Chase said that if he understood the proposition the committee had reported two resolutions: one, asking an appropriation to defray incidental expenses, because the superintendent had appropriated the funds for that object to other purposes; the other, to enable members to determine whether they wanted any further supply of stationery than they had received.

Mr. Sanders inquired whether there were any further incidental expenses to be paid. Mr. Fowler said he was not aware of any.

Mr. Kennedy called for a division of the question on said resolutions. And the question being put on the adoption of the first resolution, Mr. Sanders moved to amend the same by adding the following proviso: "*Provided*, however, That said appropriation, or any part thereof, shall not be expended in purchasing gold pens for the use of the convention," which was disagreed to.

Mr. Lovell said the first resolution was a very proper one and ought to be passed whatever might have been the conduct of the superintendent in regard to the stationery. The resolution applied to incidental expenses, which must be paid. If the superintendent should attempt to show that he had exceeded the appropriation of $690, applied it to other purposes, or had not applied it at all, and wished to draw all of it, then it was proper to take the matter in

hand; but a certificate should be given him for what he had actually expended.

The question was then put upon the adoption of said resolution, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 54, negative 7; for the vote see Appendix I, roll call 87].

The question was then put upon the adoption of the second resolution, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 35, negative 28; for the vote see Appendix I, roll call 88].

Mr. Bishop by leave presented a petition from Moses M. Strong, relative to submitting the old constitution again to a vote of the people, and moved that the same be laid upon the table and ordered printed. Mr. Doran called for a division of the question. And the question having been first put upon laying the petition on the table, it was decided in the affirmative.

The question was then put upon ordering the petition printed, and was disagreed ["agreed" in MS] to.

Mr. Sanders moved a reconsideration of the vote of the convention of yesterday on the adoption of the resolution introduced by Mr. King, relative to evening sessions. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 30, negative 33; for the vote see Appendix I, roll call 89].

Mr. Harvey by leave introduced the following resolution, which was read, to wit: "*Resolved,* That the venerable 'Antiquary,' from Iowa, the petitioner, be admitted to be heard before this convention, at some convenient day and hour, in behalf of the prayer of his petition just laid on the table by vote of this convention."

Mr. Lovell, from the committee on executive, legislative, and administrative provisions, reported No. 18, article on apportionment of representatives, as follows:

Apportionment of Representatives

"Section 1. Until there shall be a new apportionment, the senators and members of assembly shall be apportioned among the several districts of the state as follows:

The counties of Brown, Calumet, Manitowoc, and Sheboygan shall be entitled to elect one senator.

The counties of Crawford, Chippewa, St. Croix, and La Pointe shall be entitled to elect one senator.

The county of Dane shall be entitled to elect one senator.

The county of Dodge shall be entitled to elect one senator.

The counties of Fond du Lac and Winnebago shall be entitled to elect one senator.

The county of Grant shall be entitled to elect one senator.

The county of Green shall be entitled to elect one senator.

The counties of Iowa and Richland shall be entitled to elect one senator.

The county of Jefferson shall be entitled to elect one senator.

The county of Lafayette shall be entitled to elect one senator.

The counties of Marquette, Columbia, Portage, and Sauk shall be entitled to elect one senator.

The county of Milwaukee shall be entitled to elect two senators.

The county of Racine shall be entitled to elect two senators.

The county of Rock shall be entitled to elect one senator.

The county of Walworth shall be entitled to elect one senator.

The county of Washington shall be entitled to elect one senator.

The county of Waukesha shall be entitled to elect one senator.

The county of Brown shall be entitled to elect one member of assembly.

The counties of Calumet and Manitowoc shall be entitled to elect one member of assembly.

The county of Columbia shall be entitled to elect one member of assembly.

The counties of Crawford, Chippewa, St. Croix, and La Pointe shall be entitled to elect one member of assembly.

The county of Dane shall be entitled to elect three members of assembly.

The county of Dodge shall be entitled to elect five members of assembly.

The county of Fond du Lac shall be entitled to elect two members of assembly.

The county of Grant shall be entitled to elect four members of assembly.

The county of Green shall be entitled to elect one member of assembly.

The counties of Iowa and Richland shall be entitled to elect two members of assembly.

The county of Jefferson shall be entitled to elect three members of assembly.

The county of Lafayette shall be entitled to elect two members of assembly.

The county of Marquette shall be entitled to elect one member of assembly.

The county of Milwaukee shall be entitled to elect seven members of assembly.

The county of Portage shall be entitled to elect one member of assembly.

The county of Racine shall be entitled to elect five members of assembly.

The county of Rock shall be entitled to elect five members of assembly.

The county of Sauk shall be entitled to elect one member of assembly.

The county of Sheboygan shall be entitled to elect two members of assembly.

The county of Walworth shall be entitled to elect five members of assembly.

The county of Washington shall be entitled to elect five members of assembly.

The county of Waukesha shall be entitled to elect five members of assembly.

The county of Winnebago shall be entitled to elect one member of assembly."

Said article was read the first and second times and ordered printed.

Mr. Fenton asked leave of absence for Mr. Carter. Leave was granted.

Resolution No. 2, introduced by Mr. Case yesterday, was taken up, when Mr. Fenton moved to lay the same upon the table. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 29, negative 34; for the vote see Appendix I, roll call 90].

The morning hour having expired, the President announced the appointment of the following persons on the committee, under the resolution of Mr. Case adopted yesterday, to wit: Messrs. Case, Davenport, and O'Connor.

No. 4, article on banks and banking, was then taken up. Mr. A. G. Cole moved to amend the amendment as follows: "Strike out all relative to a separate submission to the people and substitute of the committee, and insert the following:

" 'Section 1. Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in all cases where in the judgment of the legislature the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this article may be altered from time to time, or repealed.

" 'Section 2. Dues from corporations shall be secured by such individual liability of the corporations and other means as may be prescribed by law.

" 'Section 3. The term "corporations," as used in this article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations, not possessed by individuals or partnerships; and all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.

" 'Section 4. The legislature shall have no power to pass any act granting any special charter for banking purposes; but associations may be formed for such purposes under general laws.

" 'Section 5. No such law shall take effect until it shall, at a general election, have been submitted to the people and have received a majority of all the votes cast at such election. No such law shall be submitted to be voted on within three months after its passage.

" 'Section 6. The legislature shall have no power to pass any act granting in any manner, directly or indirectly, the suspension of specie payments by

any person, association, or corporation issuing bank notes of any description.

" 'Section 7. The legislature shall provide by law for the registry of all notes or bills issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

" 'Section 8. The stockholders in every corporation or association for banking purposes, issuing bank notes or any kind of paper credits to circulate as money, shall be individually responsible for the amount of their respective share or shares of stock in any such corporation or association for all its debts and liabilities of every kind.

" 'Section 9. In case of the insolvency of any bank or banking association, the bill holders thereof shall be entitled to preference in payment over all other creditors of such bank or association.

" 'Section 10. No association or body corporate created by law, except such associations or bodies corporate as are created for banking purposes, shall be in any manner concerned in receiving deposits, making discounts, or issuing any bills, promissory notes, or other evidences of debt for the purpose of loaning them or putting them in circulation as money.' "

Mr. Gifford made a few remarks in opposition to the amendment. He was in favor of leaving the question of banks as a separate article to be decided directly by the people. He thought there was a disposition on the part of some members of the convention to force banks upon the people.

Mr. Sanders was opposed to the motion of submitting the bank article separately to the people and in favor of incorporating in the constitution a provision for a general banking law, whenever the people should desire it. The question had taken a wide range and the real point had not been touched. It was not a question of a bank or no bank, but whether the people could have banks if they pleased. The question of submitting to the people was like men asking whether they should trust themselves or not. He deemed it right to leave the matter so far in the hands of the people as that the legislature should have no power to incorporate banks until the people had expressed a direct desire that they should do so. While he was fully convinced that the people of Wisconsin were almost to a man antibank and would oppose any such institution, yet he was opposed to tying them up or fettering them down with any constitutional enactment. All that the people asked was that the question should be left to them in such a manner that the legislature should not impose upon the public a currency not properly guarded. He believed that if gentlemen who were here in this convention from the east and from the west represented the views of their con-

stituents, they would be in favor of incorporating into the constitution such a proviso. He had the greatest confidence in the ability and integrity of the people, fully enough to be willing to trust them and leave it for them to decide whether they would have banks or not. While on this matter, as to the statement of the gentlemen from Milwaukee who had spoken yesterday on this subject (Messrs. Kilbourn and King) and who had said that the Democratic party was the bank party, he wished to say to them that the Democratic party was not an instrument which could be negotiated by such endorsers. They could not make over the party to the banks by being its first and second endorsers.

Messrs. King and Kilbourn explained.

Mr. Sanders continued. The Democratic party for the last seventy years had been waging war against these soulless corporations—institutions which had neither souls to be saved nor bodies to be kicked. It was true that in the state of New York the Democratic party had favored a general banking law, but he still believed that it was the true policy of the party to wage war against the system until the principle of general banking should itself be demolished. He was not in favor of creating a hydra to destroy the community. Still, we must take things as we find them. We find that the business of the world, as it is carried on, requires a fictitious capital, and this capital was given by legislative enactment. It would be mad and wild to attempt a reform now which would throw things back on the specie system.

Credit, continued Mr. Sanders, is of two kinds: natural and artificial. Natural credit is that which is given to a man in consideration of what he possesses—his farm, his property, his industry, or his integrity. But the business of society is of such a shape that artificial credit is necessary. This artificial credit must be guarded and protected by legislative enactments. The capitalist becomes a borrower instead of a lender; a bank, like a bubble, when burst was gone forever. It was the object of legislative enactments to guard issues and credit. If this view was correct it carried out the views expressed by the gentleman from Fond du Lac, of limiting the powers of banks by legislative enactments. If no such means of limitation were adopted, it would be in the power of interested persons to inflate currency beyond the wants of the people, or to draw it off in an improper direction. It was necessary, therefore, in order to protect the interests of the weak against the strong, that

the legislature should have the power to limit the amount of artificial credit.

He was opposed to the principle of making stockholders liable to the full amount of stock. The same rule did not apply to banks as to partnerships. In the first case, a deposit was made equal to the full amount of issues. If the deposit consisted of dollars and cents, no gentleman would contend that it was necessary to make the stockholders liable to the amount of the stock.

It had been justly remarked that if that principle were incorporated, it would operate to prohibit entirely banks and banking. The chairman of the committee which reported the original article had openly declared that his object was to report an article which should defeat the whole system. This was practicing a species of deception which he could not countenance, and the gentleman would find himself mistaken in such an attempt to gull the people. All that the people wanted was to have the matter in their own power. If the question of banks or no banks were presented to the convention, nine-tenths of that body would vote against them. The same would be the result if that question were presented to the people. Yet nine-tenths of the people would insist on having the privilege of voting and instructing the legislature on the subject. He liked the proposition of his colleague (Mr. A. G. Cole) which was taken from the system adopted in New York. It was a sound and safe proposition and provided against the adoption by the legislature of a system that could impose upon the people. It contained many important provisions, one of which was that which made all joint stock associations corporations to sue and be sued.

Mr. Rountree said that before the question was taken he wished to state again that he was opposed to the principles contained in the amendment of the gentleman from Racine. He was opposed to what would constitute a general irresponsible banking system. He was opposed to banking in every sense, as it would be carried on here. If any provision at all for banking was adopted, he would prefer to have it made a separate subject on which the people could vote. Believing as he did that a majority of the people would vote the project down, he thought this would be the best way of getting rid of the question. He would therefore much prefer that the subject of banking should form a separate article. He took it for granted that there was not sufficient capital in the territory to carry on banking with safety or profit.

Mr. Rountree said that he could not but be amused by some remarks of the gentleman from Walworth (Mr. Estabrook) made the preceding day, to the effect that the Whig party in the convention, together with some of the Democrats, wished to force upon them a general banking law. He had himself opposed every project of banking and was not alone in so doing. One, at least, of his colleagues had made known his sentiments to the same effect. If the gentleman wished to identify the principles of banking with the principles of the Whig party, he would fail in his effort. He did not say that it was a Democratic measure, but it had been principally advocated on the floor of the convention by men who called themselves Democrats. He was quite willing that the Democratic party should have the credit of a general banking law, if one was adopted.

The gentleman from Racine (Mr. Sanders) had said that he was opposed to the principle of making the stockholders liable to any amount over and above what was held by them. Then he could not be willing to secure the bill holders to the full amount of the bills which they held. If any system of banking at all was adopted, he (Mr. Rountree) hoped that some principle would be provided by which the stockholders would be made liable to the full amount; otherwise we should have a wildcat system similar to that which had existed in neighboring states.

Gentlemen might say what they pleased about banking being a Whig measure. Let them look at those states which have suffered most from banks, and they would find them to be Democratic states. He liked to see gentlemen act up to the principles they professed. The proposition for banking was disclaimed as a Democratic measure; yet if forced through this convention at all it would be by Democrats. If such a proposition should be forced through the convention, he predicted that if it did not defeat the constitution it would prejudice it very much. He had seen no argument to show that the people wanted any such measure. If they wanted it they would petition for it. The subject had been most fully agitated by the people, particularly during the discussion of the old constitution, yet no petitions for banks had been sent to the convention. Gentlemen on the floor had sought to cover up their design. They have said the people wanted banks, without giving the least evidence of the expression of such a desire—they now sought to cover it up by means of a proposition to submit the question to the

people with general provisions adapted to the feelings of each separate part of the country, so that designing men might electioneer for it. He did not consider that there was the slightest objection to submitting the subject to a direct vote of the people. In that way he was confident the constitution would not be prejudiced; and he would predict that if it should be so submitted it would be voted down by a majority of four-fifths of the people. This was the reason why gentlemen were afraid to submit it in this manner.

Mr. Castleman said he arose to make not a speech but an apology. The peculiar position in which he was placed in relation to this subject imposed on him an obligation to do so. He represented a constituency on this subject of about 140,000 population, or over three-fifths of the whole territory. He believed that the object of appointing committees was that the subjects on which they were appointed might be condensed and brought before the body which appointed them in a form to be acted on. To reach this object properly it would be necessary that all parties interested should be fairly represented in the committee, and so far as his observation had gone such a rule had been universally followed, unless the present instance was an exception. By a reference to the names of the members of this committee, the counties which they represent, and to the census of the territory, it would be found as he had stated that he stood alone, the representative in the committee of five on this subject of more than three-fifths of the whole population of the territory, and of that portion, too, the most deeply interested in banking, of any. With so great a responsibility resting on him, his large constituency had a right to expect of him more than a silent vote. They would have a right to look for some recorded evidence that he was worthy of the high honor which had been conferred on him and that he was laboring for their interests. He acknowledged himself thankful for the high honor. He did not know how his constituents would feel in relation to the matter, but when he should tell them that he had in his life looked into two legislative halls, he did not doubt but that they would attribute the whole to his great legislative experience and duly appreciate the motives which thus honored him and took care of them. As the sole representative in the committee of the whole east, and south, and northeast, he had dissented from the report made by the majority of that committee to this convention and had expressed his dissent in a counter report, containing what he believed to be the views of a

very large majority of that part of the territory for which he had to speak; and it was his intention to have enforced those views this morning by such arguments and facts as he had collected, but he was very unwell, and unable to do so, and as he feared the subject might be disposed of before he was sufficiently recovered to be on the floor again, he had determined before leaving the hall to "ring in" this explanation and this apology for his not being heard more at length on this subject.

Whilst up, he would take occasion to say that he did not consider the question of a bank article or no bank article in the constitution the one to be discussed. If that question had not been settled by the thunder hurled at the old constitution, it was settled here. Every Democratic member who had spoken against banks had wound up by saying that he had expressed his "individual" opinion, but that public sentiment impelled him to vote for the admission of a banking clause into the constitution. Could anything be more decisive of public opinion and of its wants than this? He took that question, then, as settled, and the one to be discussed here was, what kind of banking article should they insert, and how far shall we trust the people to judge for themselves in this matter. Had he been well, it was his intention to have pointed out some of the fatal mistakes and errors which had rendered banking institutions unsafe and dangerous—to ask that they be placed as landmarks in the constitution, and that the convention leave the rest to the legislature and the people. He was no Democrat by profession, yet he feared not to trust the people. He believed that they would constitute a jury, amply intelligent and amply honest to try the claims of any bank article which might be submitted to them by the legislature, and more particularly if restricted by such provisions as were contained in the article which he had the honor to report. He could not vote for submitting an article, guarded as this was, to a separate vote of the people, as to whether it should be inserted in the constitution. The idea of asking the people whether, or how far, they would trust themselves was ridiculous in itself, and an insult to those of whom it was asked. Say that the legislature shall have no power to enact even a general banking law till the people have examined and approved the provisions under which it was to go into operation, and what more can be asked by these Democratic lovers of the people? The idea was preposterous, and he would not argue it. It was too much like boring auger holes with a gimlet.

Before resuming his seat, he must briefly notice the remarks of the gentleman from Avon, Shakespeare's "old friend" (Mr. Estabrook). That gentleman said that the scene here reminded him of a madman who had escaped from a madhouse and imagined that everybody he met was crazy; that the Whigs seemed to him to be crazy at the prospect of getting a bank; that the Democrats seemed more than half crazy on the same subject. Well, he must say that the gentleman was very felicitous in his remarks, if they were intended to illustrate the case of the madman who imagined everybody else crazy, for it would not be forgotten that of all the Whigs who had taken part in this discussion, but one had favored banking; the rest—some three or four—had opposed it in every shape—wholly, unconditionally. Nor was this all. The gentleman had told us with what indignation the Whigs of his county could hardly restrain their hisses at an eminent lawyer from Milwaukee, who spoke last spring in favor of banks, and yet the gentleman "imagined" the Whigs all "crazy" at the prospect of getting banks. Verily, the gentleman in the description of his madman very forcibly reminded him of a quotation from "his old friend" Byron, who said that

> All who saw the idiot in his glory,
> Conceived the bard the hero of his story.

Sir, I am at home a Whig and "nothing else." I am in favor of inserting into the constitution an article allowing banking, when the public decide that banking is expedient. But on this floor, sir, I am a member of no party. I was elected to assist in framing a constitution to be the fundamental law for all parties, and I cannot make that sacred trust subservient to party purposes. But as the gentleman from Avon has dragged the Whig party into the contest, as a party, I must be permitted to say that—whilst it has been impossible to tell from the course taken by the Democrats here which side of the question they advocated—whilst they are opposed to banks from principle, they favored them for popularity. Whilst the Democrats have here disputed and wrangled as to whether their party was a bank party or an antibank party; whilst the Democratic chairman of the committee on banking has expressed himself opposed to all banks but reported himself in favor of banking in its most odious feature and recommended to this body to insert in the constitution an article accordingly; I say, whilst all this legerde-

main has been enacting here, every Whig who has taken part in the discussion has come boldly, openly, honestly to the point, and expressed himself decidedly on one side or the other. Yes, sir, whilst the Democrats here have done nothing else but "chaussi" right and "chaussi" left, every Whig has been found dancing square to the fiddle. This, at least, will not be denied.

I would call the attention of this body to the remarks of the gentleman from Fond du Lac, indignantly repudiating the idea that Democrats were bank men. Sir, on the fifty-third page of the journal of the old convention will be found a very liberal bank article, introduced by the gentleman from Fond du Lac as an amendment to a no-bank proposition then pending.

Beall—The gentleman from Marquette introduced that amendment.

Castleman—It bears your name, sir, and I believe there was but one of the name in the other convention.

Beall—Another man, sir.

Castleman—Oh, ho! If the gentleman, in changing his constituency, has " progressed" so rapidly as to deny his identity, I press him no further.

Mr. Jackson said that some of the arguments which had been used on this subject in the convention were, to say the least of them, rather paradoxical. Gentlemen had arisen and declared their utter hostility to banks, and in the same breath had gone on to present propositions by which they might be created. Some Whigs had argued long and ably in favor of some kind of bank project, while others were altogether opposed to anything of the kind. The same was the case with the Democrats. The gentleman from Racine (Mr. Sanders) had spoken of the principles of the Democratic party in reference to banking and had said that for seventy years the party had been at war with banks. His own knowledge did not go so far back, but he knew that for ten or twenty years the Democratic party had been opposed to all connection between the government and banks, to all special charters, special privileges, and chartered monopolies; but never as a party had they made war upon all banks, nor had any party done so. They believed that the system of banking as carried on in this country was carried on in its worst form. He would leave the question of banking to other gentlemen. One word in regard to the proposition of submitting this question in a separate article to the people. He could see no more propriety in

submitting the question of banks in a separate article, than any other question; and at one time he had been almost inclined to propose—to see if some gentleman would not vote for the proposition—that the constitution should be submitted in separate articles to the people, to be voted on at every town meeting, article by article. For his own part, he did not desire to dodge any responsibility and he could not consider this project of submitting the bank article separately to the people in any other light than an effort to avoid responsibility. One view of the matter had struck him in rather a peculiar manner. Suppose that if the article were submitted separately, the people should reject the constitution and adopt the bank article. Would not the bank article then be the constitution of the state?

Mr. Chase could only say that if the Democratic party had not repudiated banks, it was high time they did so. He could not understand by what system of figures the gentleman from Waukesha could make out that he represented three-fifths of the population of the territory. It was certainly not in his views on banking, for at least four-fifths were opposed to him in them. Mr. Castleman explained that he had reference to particular localities. He supposed the committee was selected so as to represent particular portions of the country. If the gentleman would look at the portion which he represented, he would perceive that he was right. Mr. Chase said he was still at a loss to know how the gentleman from Waukesha could represent 140,000 people—three-fifths of the entire population of the territory. He had no idea that so large a population resided in Waukesha County. But let that pass. One word in answer to the severe remarks of the gentleman from Racine (Mr. Sanders) in reference to the committee of which he was chairman having reported an article which they knew would not be adopted. The reason for the hostility of that gentleman to the article was that by it bill holders were amply and sufficiently secured. That was the great objection of the gentleman from Racine, for he well knew that no company would commence banking without reserving to themselves some opportunity of swindling the people. The same gentleman had also remarked that the same law which applied to partnerships should not be applied to banks, for the reason that the stock deposited was ample security and would be liable for the debts of the bank. Has the stock deposited ever been sufficient security? Let us apply to history for an answer. If so, we should have had no frauds in banking. Every member of a corporation

was a partner in the concern and should be held personally and individually liable.

Mr. Fox said a great deal of time had been consumed upon the subject now before the house, and for his own part he had not intended to perpetrate anything more at the expense of this patient and long-suffering convention. A large and respectable portion of his constituency, however, required him to support some kind of bank. He was, himself, when at home a regular wool-dyed, anti-wildcat-bank Democrat and should always go against banks. Still he intended to vote for the report of the majority, out of respect to the feelings of a large minority, and because banks and banking were therein guarded by a strict system of responsibility. In the amendment before the convention, said Mr. Fox, we have forced upon us under the semblance of equal rights a wildcat banking system of the worst kind. No equal rights are in fact given by it. None but capitalists can undertake banking. Do gentlemen expect us to vote for such a law, or even to submit it to the people? It is true, the people may be trusted, but by some system of electioneering they may be cheated into voting for a general banking law; and when the gate is once lifted, utter ruin may follow. A bank may be established at every corner. They may be as plenty as blacksmiths' shops. With what consistency can gentlemen talk of hydras, who are at the same time antibank in their speeches and probank in their propositions? Let them rather compare their own projects to the beast with seven heads and ten horns.

I learned yesterday for the first time (continued Mr. Fox) that the Democratic party were in favor of a wildcat system of banking. My constituents expect no such thing at my hands. On the contrary, they were generally satisfied with the provisions of the last constitution in this respect, with the exception of the celebrated sixth section. Why do gentlemen say that public opinion calls for banks now, when it did not last spring? I ask that some gentleman will explain in what manner the people ask this at our hands. They have sent in no petitions on the subject, and certainly if they desired banks they would take this mode of making known their wishes.

Mr. Kilbourn said he was sorry that it became his duty to say anything on this subject. It had become necessary for him, however, to define his position. Gentlemen had talked long and loud in reference to wildcat banks and special charters. He could not

see why a general charter could not be guarded as well as a special one. Why make a distinction between the two charters? The people could be secured as well under the one as the other. Gentlemen have said that the people do not want banks in any form. Why, then, trouble ourselves about them? If the people desire such a system as is embodied in the report of the committee, they do not want a bank. Why, then, force such a thing in any form upon them? He would be found in all his votes going for an entire separation between the interests of the government and banking. No marriage has yet been contracted between these interests, and he trusted none would be consummated. All he wished to see in the constitution on the subject was this: "The legislature shall have no power to incorporate any banking institution in this state."

Mr. A. G. Cole called for a division of the question. The question was then put first on striking out, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 23, negative 41; for the vote see Appendix I, roll call 91].

Mr. Beall moved to amend section 3 by striking out the words "or some paying state in the United States," which was agreed to.

Mr. Judd moved that the convention take a recess until half past two o'clock P.M., which was agreed to.

HALF PAST TWO O'CLOCK P.M.

No. 4, article on banks and banking, was taken up, when Mr. Judd moved to amend the amendment as follows: "Strike out in the first section the words 'either general or special,' and insert the word 'special' before the word 'land' ['bank'?] in the same section, and add at the end 'except such as are provided for in the following section of this article.'

"Strike out all after the first section and insert, as section 2, as follows: 'Section 2. No general law authorizing banking in any manner or under any pretense whatever shall ever be passed by the legislature of this state unless the said law be general in its terms and convey rights equally to every person. Such law shall not take effect or be in force unless it shall have been submitted to the electors of this state at a general election and shall have received in its favor a majority of all the votes cast at such election upon that subject.'"

Mr. Judd spoke at considerable length in support of this amendment.

Mr. O. Cole congratulated the convention on the introduction of this proposition on which all might unite, as the gentleman had said. He recollected back forty-eight hours, when the gentleman from Dodge was advocating with much earnestness things which

were directly opposite to those he now proposed. If other gentlemen could change their views as easily, or had as much ingenuity to reconcile inconsistencies, perhaps they might unite on this proposition or almost any other; but he doubted whether it were possible as things stood. He thought if the convention could not agree, they should submit the question to the people in a separate article. True, the gentlemen from Dodge saw a great many objections to this, but he had seen and said the contrary in parallel cases before, and he thought that whatever they might do in regard to it, or whatever system they might establish—special charters, wildcat, or even a total prohibition—they would be able to quote the gentleman from Dodge in favor of it. He hoped the amendment would not prevail.

The question was then put upon the adoption of the same, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 23, negative 39; for the vote see Appendix I, roll call 92].

Mr. Bishop moved to amend the article by striking out all after section 1, which was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 30, negative 31; for the vote see Appendix I, roll call 93].

Mr. Beall moved to amend the amendment by adding the following as section 10, to wit: "Section 10. The legislature shall limit the aggregate amount of bank notes to be issued by all the banks and associations which may exist in this state."

Mr. Whiton spoke in opposition to the amendment, Mr. Beall in favor. Mr. Kinne said that if the gentleman was in favor of legislative restrictions as to the gross amount of bills to be issued, he could not see the force of his argument. He could see nothing in any of the propositions now before the convention to indicate that banking would be overdone; and he would want to see strong reasons to induce him to go for legislative restrictions upon the amount. The quantity of capital being limited, and that limit being far below the quantity actually required in the commercial wants of the country as shown by the high rate of interest, no maximum is needed. There was a great disposition abroad to tamper with the currency. Different financiers were continually proposing different schemes in the legislature and seeking to carry them out. The frequent changes of policy thus occasioned were disastrous to the business of the country. The safe and true theory in regard to currency was to allow the quantity which the natural wants of business

demanded. If the gentleman wished to fix a permanent maximum in the constitution, it would do no harm any further than it would be absurd; but if it were left to the legislature to increase or diminish it at pleasure, it gave them a great power for mischief over the whole business of the country, which they would be very likely to exercise injuriously. There would be no such thing as free banking, absolutely. No such proposition had been submitted here. All of them have imposed some restraints—some more, some less. None of them gives to every individual the right of banking on just as small a capital as he would choose, which alone would be free banking. Some restrictions had always been imposed and were necessary. It might be some infringement upon the metaphysical "right" of the people, but in a civilized community it was absurd to talk against them on that account. If the bill should pass, he would prefer that the power of fixing the maximum should not be given up to the legislature. He thought there would be few banks established here for a number of years, unless the rate of bank interest were raised to twenty or twenty-five per cent or unless they should be allowed to issue bills to twice or thrice the amount of their capital stock paid in, neither of which propositions formed a part of any plan now before the convention. Private individuals could lend their money at from fifteen to twenty-five per cent interest, which was far more profitable than investing it in banking.

The question was then put upon the adoption of the same, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 22, negative 38; for the vote see Appendix I, roll call 94].

Mr. Sanders moved to amend the amendment by adding as section 11 the following: "No association or body corporate created by law, except such as are created for banking purposes, shall be in any manner concerned in receiving deposits, making discounts, or issuing any bills, promissory notes or other evidences of debt for the purpose of loaning them or putting them in circulation as money." The question was then put upon the adoption of the same, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 33, negative 26; for the vote see Appendix I, roll call 95].

Mr. Harrington moved to amend the fifth section as follows: "Insert after the word 'shall' the words 'not be of a denomination less than five dollars, and the same be.'"

Mr. Sanders said it was one great fault in the last constitution that it prohibited the circulation of small bills. He was in favor of the principle, but experience showed that it was impossible to carry

it out. We could not prohibit the circulation of small bills among us from other states. If we prohibit our banks from issuing them, therefore, we shall affect them injuriously without at all reaching the evil we are aiming at. The experiment had been tried in New York and failed wholly.

Mr. Kinne said he would vote for the amendment. It was liable to the objection which the gentleman had stated, to some extent, but not to so great an extent, he thought, as the gentleman supposed. There was a tendency in the business world at this time to put away the use of small bills and substitute specie in their stead. This tendency was beneficial to any banking system; and it was a sign of health that banks in general had countenanced it. If gentlemen looked to the interest of the public and not to that of the stockholders wholly, they would encourage the same in the system we are now establishing. It would keep a large amount of specie among us, which would be highly beneficial to the banks themselves in any emergency. It was a well-established fact that bank bills and specie could not circulate together. It was natural for a man to pass off the worst money he had first. A bad bill would circulate much faster than a good one; and any bill would circulate faster than specie because every man held on to his specie and parted with that last. A counterfeit would circulate fastest of all. This was human nature. Where five-dollar bills circulated, few sovereigns or one-half eagles were seen; and where one-dollar bills circulated, few silver dollars were seen. The only reason we had silver dollars here was because we were near the land offices, near the mines, and near Missouri, where there was a sound specie basis for their system of banking. He hoped the amendment would prevail. It was assuming no doubtful power, and he thought the expediency of it was hardly doubtful.

Mr. Judd spoke.

The question was then put upon the adoption of the same, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 29, negative 32; for the vote see Appendix I, roll call 96].

Mr. Larrabee moved to amend the amendment by striking out all after the word "state" in the first section and inserting the following: "*Resolved*, That the following sections shall be submitted when the votes of the electors shall be taken for the adoption or rejection of this constitution, to be voted upon separate and distinct from the body of the constitution. The votes given upon those sections shall be deposited in a separate box and shall have

on them the words following: 'Banks—yes' on those votes in favor of the adoption, and 'Banks—no' on those votes against the adoption of said sections. And if a number of votes equal to a majority of all the votes cast for and against the said constitution shall be 'Banks—yes,' then said sections shall take the place of section 1 of the article entitled 'Banks and Banking' in the body of said constitution. But if a number equal to a majority as aforesaid shall be 'Banks—no,' then said sections shall be rejected and section 1 in said article shall be and remain in full force."

And the question being put on its adoption, Mr. Jackson called for a division of the question. The question was then put first upon striking out, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 42, negative 16; for the vote see Appendix I, roll call 97].

Mr. Beall moved that the vote just taken be reconsidered. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 19, negative 41; for the vote see Appendix I, roll call 98].

The question was then put upon inserting the amendment proposed by Mr. Larrabee, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 27, negative 34; for the vote see Appendix I, roll call 99].

Mr. Sanders moved to amend section 4 by striking out the words "in the city of New York."

He said New York was the worst place in the country in which to have stock appraised. Everyone knew that the Wall Street operations in stocks were a perfect system of gambling, not regulated at all by their actual value. Our banks would be wholly at their mercy in case we should not make this amendment.

Said amendment was agreed to. And a division having been called for, there were 23 in the affirmative and 15 in the negative.

Mr. Kilbourn moved to amend the amendment by striking out section 4, which was agreed to.

Mr. Jackson moved to amend the amendment by striking out section 1.

Mr. Chase said he had not intended to take any part in the discussions upon the amendments offered, till the friends of the article had had time to amend it to their satisfaction; but from their course he must be allowed to say that he thought they would soon get it into such a shape that they would not vote for it themselves. He was glad of it and hoped we should soon take a vote on it and reject it altogether.

The amendment was agreed to.

Mr. McClellan moved to amend the amendment by striking out in section

6 after the words "exceeding the" the word "appraised"; also by striking out all after the word "security" in said section, which was agreed to.

Mr. Harvey moved to amend the article by striking out the whole report of the committee and inserting as follows:

"Section 1. The legislature shall not have power to pass any law which shall create any bank or grant to any person or persons whatever any banking power or privilege.

"Section 2. The legislature shall not have power to pass any law which shall prohibit or restrain persons or associations from issuing their own notes or other evidences of debt in any form they may think proper, to circulate as currency."

The question was then put upon the adoption of the same, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 15, negative 46; for the vote see Appendix I, roll call 100].

Mr. Chase moved that the convention adjourn, which was agreed to. And a division having been called for, there were 34 in the affirmative and 21 in the negative. So the convention adjourned.

THURSDAY, JANUARY 13, 1848

Prayer by the Rev. Mr. Penman.

The journal of yesterday was read and corrected. Mr. Castleman asked leave of absence for Mr. Cotton. Leave was granted.

Resolution No. 2, introduced by Mr. Case on the eleventh instant, was taken up, when Mr. Judd moved that the same be indefinitely postponed. And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 35, negative 24; for the vote see Appendix I, roll call 101].

Resolution No. 4, introduced by Mr. Gifford on the eleventh instant, was taken up, when Mr. Lewis moved that the same be referred to the select committee on that subject, which was agreed to.

Resolution No. 3, introduced by Mr. Harvey yesterday, was taken up, when Mr. Harvey asked leave to withdraw the same. Leave was granted. Resolution No. 3, introduced by Mr. A. G. Cole on the eleventh instant, was then taken up. And the question having been put upon the adoption of the same, it was decided in the negative.

Resolutions were introduced and read as follows, to wit:

By Mr. Doran: "WHEREAS, the desks and chairs of members are every morning found covered with dust, and WHEREAS, of the two evils, dust on the carpet is more tolerable than on the desks, and chairs, and WHEREAS, the officer to whom the dusting of the chamber has been assigned by the proper committee has nothing whatever else to do; *Resolved*, therefore, That the sergeant at arms be and is hereby instructed to see that the hall be properly prepared every morning for the reception of the members, and that he report to the convention any officer who will not perform his duty."

By Mr. Lovell: "*Resolved*, That the thirteenth rule be so altered that a motion to strike out and insert shall be deemed indivisible."

No. 4, article on banks and banking, was then taken up.

Mr. Richardson asked whether it would be in order at this stage of proceedings to offer a substitute to the whole article. The President decided that it would not.

Mr. Kilbourn moved to amend the article by striking out all after the word "privilege" in the first section and inserting the following: "But in case the separate article entitled 'Free Banking,' which is appended to this constitution and [which is to be] submitted separately to a vote of the people for their adoption or rejection, should be adopted by a majority of the votes given on that subject, then and in that case it shall be lawful for the legislature to pass general laws on the subject of banking, conformably to the provisions of said separate article; and said article, if so adopted, shall be a part of this constitution and shall be appended to and form a part of this article."

RESOLUTION TO SUBMIT THE ARTICLE ON FREE BANKING TO A SEPARATE VOTE OF THE PEOPLE

"*Resolved,* That the following article be submitted to the people, to be voted upon separate and distinct from the body of the constitution. The votes given on that subject shall be deposited in a separate box and shall have on them written or printed [or partly written and partly printed] the following words: 'For free bank article' on those votes in favor of adoption, and 'Against free bank article' on those votes against the adoption of said article; and if a majority of said votes be 'for,' then said article shall be adopted; but if a majority of said votes be 'against,' then said article shall be rejected."

FREE BANKING

"Section 1. The legislature shall have power to pass general laws for the purpose of authorizing corporations or associations to transact banking business; but all such laws shall be conformable to the following provisions in this article contained.

"Section 2. No corporation, institution, association, person or persons shall issue any bill, note, or other paper in the form of bank bills, or in any other form intended to circulate as money, except in pursuance of laws authorizing such issue, passed and approved agreeably to the foregoing section of this article.

"Section 3. The legislature shall not have power to pass any law sanctioning in any manner, directly or indirectly, a suspension of specie payments by any person, association, or corporation issuing bank notes, or notes for circulation as money, of any description.

"Section 4. The legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money and shall require ample security in stock of the United States for the redemption of the same in specie.

"Section 5. In case of the insolvency of any bank or banking association, the bill holders thereof shall have preference in payment over all other creditors of such bank or association.

"Section 6. The stockholders in every corporation or association for banking purposes, issuing bank notes or any kind of paper credit to circulate as money, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind."

Mr. Kilbourn said that he had offered in committee of the whole an amendment to an amendment which was a substitute for the whole article, but had withdrawn it to oblige the gentleman from Racine, Mr. Sanders, who claimed the right to amend the first amendment before it was struck out. According to the decision of the Chair, it was now impossible for him to resuscitate his proposition. Such being the fact, and as he could not now offer it as a

substitute for the article reported by the committee of the whole, he proposed the amendment he now offered as a means of securing the object he had in view. If his amendment prevailed he would then submit a substitute for the articles struck out.

Mr. Prentiss inquired whether it was in order to act on the original article before acting on the report of the committee of the whole. The Chair explained the position of the question.

Mr. Whiton made some remarks.

Mr. Chase called for a division of the question. And the question having been first put on striking out, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 40, negative 22; for the vote see Appendix I, roll call 102].

Mr. Chase moved to amend the amendment by striking out the word "free."

He said there was no such thing as "free banking," and he was utterly opposed to allowing banks to sail under false colors.

Mr. Kilbourn hoped that Mr. Chase's amendment would not prevail; for, whether gentlemen might think the term applicable or not, it was the term by which the system of banking contemplated by the proposition was generally known. He had once listened to a humorous story of a man who called his son "Yonkee," and the reason he assigned for doing so was that "Yonkee" was his name. There was a difference of opinion as to whether the name was applicable, but that must be decided according to taste. We have such a term as "free trade." It was not pretended that every individual would have his ship upon the waters, but that trade was free to every citizen who should chance to avail himself of this freedom. Every man in the country was ready to fight for "free trade and sailors' rights." Trade was free to all who chose to engage in it. That was all that was meant by "free banking." Mr. Kilbourn said that he wished to obtain an expression of opinion from the convention on the question of submitting the bank article as a separate and distinct proposition to the people. This proposition was nearly identical with that of Mr. McClellan, except that it contained a provision for separate submission to the people. The question was narrowed down to the single point, whether the article should be submitted separately or incorporated in the constitution. If a majority of the convention should decide against a separate submission, he would be content to abide by their decision. If they de-

cided otherwise, he assumed as a matter of course that the minority would yield.

Mr. Sanders thought that on this question of banks we might well barter ten acres of unexplored sea for one of good sound turf. On looking over his files, he found that on the first day of the session the gentleman from Milwaukee (Mr. Kilbourn) brought in several propositions on the subject of banks, to be distinctly embodied in the constitution—propositions which were wise and which, if adopted, would have materially facilitated the business of the convention. If these propositions reflected the views of that gentleman's constituents, why did he fly from them? In the remarks which he himself had made he believed he represented the views of his constituents. He thought that the views first entertained by the gentleman from Milwaukee truly represented the wishes of that gentleman's constituents. He called upon him to stand up for them now. He hoped the convention would go back to what he conceived to be the proper issue before it, whether a general or a special law should be incorporated in the constitution.

Mr. Beall spoke.

Mr. Chase, in reply to Mr. Kilbourn, said that it seemed to him that the gentleman from Milwaukee evaded the true point—he seemed disposed to take things by the smooth handle. If the boy's name was "Yonkee," it was right to call him so. The true name of the banks to be incorporated by the proposed system was "wildcat," and "wildcat" they should be called. In the distinction which the gentleman from Milwaukee had drawn between his proposition and that of the gentleman from Racine (Mr. McClellan) there was one very essential difference which he had overlooked. In the latter proposition was a clause providing for the individual liability of stockholders to the full amount. There was no such clause in Mr. Kilbourn's proposition. This involved so great a difference, that he, though friendly to the principle of separate submission, would be compelled to vote against Mr. Kilbourn's proposition.

Mr. Kilbourn replied that there was a great difference between his proposition and what was commonly called the "wildcat" system of Michigan. That system allowed real estate to be taken as security. The whole system was a fiction. His proposition required as security a deposit of United States stock to the full amount of the issue. It was an absolute security—dollar for dollar. And the system was free to all who had capital to embark in it. In answer to

the gentleman from Racine he would state that the first proposition he submitted was to insert in the constitution an article similar to that adopted in New York with one or two additional safeguards. One restricts the security to United States stocks alone. Another restricts individuals from issuing paper for circulation. The inconsistency with which that gentleman charged him consisted in this: that his former proposition required that the act of the legislature creating banks should be submitted to the people, whereas his present proposition provided that the bank article should be first submitted to them. To him this was a matter of indifference. His only reason for adopting the latter course was, as he had stated on a former occasion, that some people were so radical in their opposition to banks that he believed they would oppose any constitution which contained a bank article. This was a question for the convention to decide, and one course was as much in conformity with his views as the other.

Mr. Richardson said that it appeared to him that they had all got wrong on this subject of banks. Every proposition of every gentleman seemed to have in view some particular system of banking. Members were not assembled in convention to decide on a banking system; they were convened to form a constitution. Gentlemen argued that if the article were left in the constitution, the people would vote against the constitution on that account. But if any proposition in detail is presented to the people, we get an expression of opinion from them only on this particular proposition. He was decidedly in favor of leaving the subject entirely open—authorizing the legislature to pass some law on the subject, to be submitted to the people.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 18, negative 43; for the vote see Appendix I, roll call 103].

Mr. Prentiss moved to amend the amendment by substituting the following: "Section 2. The legislature may at any regular session authorize banking by a general law, conveying rights equally to any person; but such law shall not take effect, unless the same shall have been first submitted to a separate and distinct vote of the electors at the next general election succeeding the passage of the same, and shall have received in its favor a majority of all the votes cast at such election.

"Section 3. The stockholders in every bank or banking association shall be individually liable to the full amount of all its debts and liabilities; and

in case of the insolvency of any such bank or banking association the bill holders thereof shall have preference in payment over all other creditors of such bank or association.

"Section 4. The legislature shall provide by law for the registry of all bills and notes issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

"Section 5. The legislature shall not have power to authorize any bank or banking association to suspend specie payments.

"Section 6. The legislature shall limit the amounts of notes to be issued by any bank or association which may be established within this state.

"Section 7. Any law passed under the provisions of this article may be amended or repealed in the same manner as the said law shall have been enacted, and in no other manner."

Mr. Prentiss remarked that it did not materially differ from the proposition which had been submitted by Mr. McClellan. He was opposed to the plan of submitting the bank article separately to the people, because it involved a double submission. One submission was enough; and a proposition should be incorporated which should require one. The proposition of Mr. Kilbourn provided that the stockholders should be liable only to the amount of their stock. He could vote for no proposition which did not require full liability. He could not see why the same principle which applied to partnerships should not apply to banks. The bill holders derived no profit from banking associations. The direct profit was to the stockholders, and if any loss occurred they should sustain it. If the security was ample, then the stockholders would sustain no loss, and the principle of individual liability if applied to them could do them no injury.

Mr. Estabrook had no great choice between the two propositions, except as regarded the point of separate submission to the people. He should certainly yield his support to that principle. He was in favor of commencing with an antibank basis, at the same time leaving it to the people whether they should have banks or not. As to the details of the proposition, he left them to other gentlemen. All knew that the question of bank or no bank had been constantly argued since the origin of the government. He thought it could not but have a salutary effect to submit this question to the people in their primary capacity. The question would then be settled in the incipient condition of state government. Let the great idea involved by this question go before the people, and the important principle which has agitated the country from Maine to Georgia be finally settled and disposed of when we first enter upon state government.

Mr. Sanders declared his intention to vote for Mr. Prentiss' amendment and against the proposition submitted by Mr. Kilbourn, because he was opposed to the principle of a separate submission of the question to the people and also to some of the details of Mr. Kilbourn's proposition. It was proposed to submit the article separately to the people; and in case the people should adopt the article, the legislature could go on and incorporate banks without guard or check. Every corporation, every railroad company, every irresponsible establishment like that already existing in Milwaukee and which he could not designate otherwise than as a curse to the people and a sore on the body politic, might issue a currency. He was opposed to the principle of making the stockholders liable beyond the amount of their individual stock. In limited partnerships the partners were liable only to the amount which each paid in: the same principle applies to bankers. If the security given by the stockholders consisted of specie, no one would require individual liability on the part of the stockholders. If it consisted of state stock or bond and mortgage, it might be liable to depreciation. If, then, the stockholders were made liable to the amount of stock which each held individually, there would be abundant security against loss by such depreciation.

Mr. Judd read to the convention a list of bank failures in the state of New York.

Mr. Castleman regretted that Mr. Prentiss had submitted his proposition at that time and hoped he would withdraw it. The gentleman from Milwaukee (Mr. Kilbourn) had expressed his opinion that the vote on his proposition would be a settler on the question of a separate submission of the article to the people. He was opposed to the proposition, but anxious that the question should be settled. That gentleman was so good a Democrat that he (Mr. Castleman) felt confident he would, if the proposition should be voted down, come in and work with the majority. Mr. A. G. Cole said that he would be compelled to vote against the proposition of Mr. Prentiss or any other proposition which should contain a particular bank system. He would also vote against a separate submission of the article. He was willing that the question of bank or no bank should be tried in the convention, and if the majority said "No bank" he would be satisfied. He would not vote for any proposition in detail to be engrafted in the constitution.

Mr. Vanderpoel deemed it his duty to define his position on the subject before the convention. His opinion of banking institutions had long since been settled. He regarded them, in the language of the poet, as

> Monsters of so foul a mien,
> As to be hated need but to be seen.

He was opposed to banks in all their phases, but was willing that the legislature should have power at any time to present the subject to the people. If, at any future time, the legislature should cause the people to vote on the question, and the people should vote in favor of banks, then let the legislature pass a charter, and before it goes into effect let it go before the people for their suffrages. Mr. Vanderpoel said that if an opportunity should present, he would submit such a proposition to the convention.

Mr. Lovell said that Mr. Prentiss' proposition contained nearly all that should be expressed in detail, as forming a part of the constitution, if anything should; but it did not contain one good provision which was contained in the proposition of Mr. Kilbourn; that was the requirement of United States stock for security. Inasmuch, therefore, as Mr. Prentiss' proposition went into detail and did not contain that provision, he could not vote for it. He was more and more convinced, on reflection, that a separate submission to the people was not the thing. No man could vote understandingly on the constitution unless he knew what it contained. If the article were submitted separately, those who voted for the constitution would not know whether they were voting for a constitution which would authorize banking or not. The constitution should be submitted to the people as a whole. He thought Mr. Kilbourn's proposition highly objectionable, inasmuch as if the people should vote in favor of banks, the legislature could go on and make them without submitting them to the people. The gentleman from Jefferson before him (Mr. Vanderpoel) had detailed a plan which met with his entire concurrence, so that with a view of bringing it forward, if for no other reason, he would vote against both of the other propositions. He understood, also, that one of the members from Milwaukee (Mr. Larkin) had a proposition to the same effect as that sketched by Mr. Vanderpoel, by which all the difficulties arising from detail and submitting to the people and all objections whatever were obviated.

The question was then put upon the adoption of the same, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 4, negative 57; for the vote see Appendix I, roll call 104].

Mr. Larkin moved to amend the amendment by substituting the following: "Section 2. The legislature of the state shall have power to submit to the voters at any general election the question of 'bank or no bank'; and if at any such election a number of votes equal to a majority of all the votes cast at such election shall be in favor of banks, then the legislature shall have power to grant bank charters or to pass a general banking law, with such restrictions and under such regulations as they may deem expedient and proper for the security of bill holders: *Provided*, That said law shall have no force or effect until the same shall have been submitted to a vote of the electors of the state at some general election and been approved by a majority of all votes cast at such election."

Mr. Kilbourn requested Mr. Larkin to withdraw his proposition in order to have an opportunity of ascertaining the sense of the convention on the question of submitting the article to the people. Mr. A. G. Cole hoped that Mr. Larkin would grant the request of Mr. Kilbourn. He thought that the convention would vote down Mr. Kilbourn's proposition in less time than they would take to talk about it. Mr. King hoped that Mr. Larkin would insist upon his amendment. It afforded the first glimpse of day after groping four days in the dark. He could see no other way of getting at the question. It offered a compromise ground on which all could meet. Mr. Kilbourn urged the withdrawal of the amendment. Mr. O. Cole said that he would feel bound to support Mr. Larkin's proposition. Gentlemen might be here beating the wind forever, all being in favor of submitting an article to the people, but none agreeing as to what they should submit. Mr. Chase regarded Mr. Larkin's proposition as a middle ground on which all parties could meet. He would vote for it. He wished, however, that a vote could have been taken on Mr. Kilbourn's amendment, to show him how easily the convention would have killed his bantling. Mr. Vanderpoel said that he would support Mr. Larkin's amendment. It was substantially the same as the one which he was about to propose. It was the only common ground. Mr. Scagel spoke in support of Mr. Larkin's amendment; but his remarks were inaudible to the reporter on account of noise in the hall.

Mr. Castleman inquired whether, if the proposition now before the convention was adopted, it could be amended. The President said no.

Mr. Castleman: Mr. President—I shall oppose this proposition as being the most perfect fraud upon the people of any that has been presented to this convention. Why, sir, what does it amount to? Requiring a majority of all the votes cast at such election to enable the legislature to act at all in the matter, then requiring a majority of all the votes cast at such election to make it a law, is an utter prohibition of all banking; whilst it holds out to demagogues, if there are any such in this convention, the opportunity to show to their bank constituents distinctly that they voted for a bank provision, and at the same time to show to their antibank constituents that they voted for it because it amounted to an utter prohibition of all banks. Why will not the gentleman allow his amendment to be so altered as to require a majority of the votes cast "on that subject" to authorize legislative action, and the same majority to enact the law? Why, sir, because this would be giving the people "a chance." But, sir, we all know how easy it is at a general election (and it is at such that this question must be submitted) where hundreds—aye thousands—of men who vote for particular candidates are dissuaded from voting at all on a subject like this. We all know how easy it is at an election like this for the political wire-workers to withhold ballots from those who would vote on this subject were the ballots before them, but do not feel interest enough in the subject to hunt up ballots—and yet every such vote as this, though neither for nor against the subject, is to be counted "against it." Look, sir, at the election of last spring when the subject of free suffrage was submitted to the people as a separate question. Why, sir, important as it was, not one-half the people of the whole territory voted on it at all; and such was the case when the question of license to sell spirituous liquors was presented in the same manner—yet every man who voted on any other subject at this election and did not vote on this is to be counted "against it." Why will not men stand up to this subject fairly and if they are opposed to banking say so, honestly, openly, candidly, and insert into the constitution a prohibitory provision? Why play thus with the people as with children? Sir, they'll be understood and remembered.

The question was then put upon the adoption of the same, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 46, negative 15; for the vote see Appendix I, roll call 105].

The question was then put upon the article as amended, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 46, negative 15; for the vote see Appendix I, roll call 106].

The question was then put upon concurring in the amendment of the committee of the whole, and was decided in the negative. The question was then put upon ordering the article to be engrossed and read a third time, and was decided in the affirmative.

On motion of Mr. Folts the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

Mr. Whiton, from the select committee to whom the subject had been referred, made the following report, to wit:

"The committee appointed to investigate the claim of William S. Hamilton to the seat in the convention occupied by the Hon. John O'Connor, as a delegate from the county of Lafayette, have attended to the duty assigned to them and beg leave to report that it appears from an abstract of the votes given in the county of Lafayette for delegates to this body, at the election held on the twenty-ninth day of November last, that Charles Dunn received 561 votes, [John O'Connor] 436 votes, Allen Warden 461 votes, William S. Hamilton 434 votes, John W. Blackstone 422 votes, and William McGannegal 317 votes, the number of delegates to which the said county of Lafayette was entitled being three. It hence appears that the first three persons named were duly elected unless something can be shown to vary the result, as manifested by the official canvass of the votes.

"William S. Hamilton, the contestant, contests the claim of the Hon. John O'Connor to the seat now occupied in this body by him on the ground that illegal votes were cast for the said John O'Connor [sufficient to overbalance the majority which according to the canvass as above stated the said John O'Connor] obtained over him; and second, because the poll held at Shullsburg in said county of Lafayette was illegal for the reason that it does not appear that the judges of election were sworn as the law prescribes, and that the place where the votes were taken was not such a place as the law requires. Immediately after their appointment the committee appointed two commissioners to take testimony relative to the facts alleged by the contestant as the ground of his claim, as they were authorized to do by a resolution passed by this honorable body. The said commissioners have executed the powers conferred upon them by the commission and have taken testimony on the part of the contestant and the sitting member, which was returned to the president of this body and has been laid before your committee.

"From the testimony thus taken and returned the said contestant claims that the following points are proven:

"First. That one Timothy Norton voted at Wiota precinct in said county for the sitting member and not for the contestant and that the said Norton was not a legal voter in said precinct.

"Second. That William Wilkinson and Abraham Pilling voted for the sitting member and not for the contestant at the Willow Springs precinct in said county and were not either of them legal voters in said precinct.

"Third. That Barney Michaelbane and Thomas Langton voted for the sitting member and not for the contestant at the precinct of Shullsburg in said county and were not either of them legal voters in said precinct.

"Fourth. That Charles Goade and William Bray voted for the sitting member and not for the contestant at the Elk Grove precinct in said county and were not either of them legal voters at said precinct.

"That the judges of election were not sworn in at the election held in [the precinct of] Shullsburg and that the election held in said precinct was not held at such a place as the law requires.

"The sitting member claims that the said testimony proves that Mathew Harris and James Wheeler, or Phelan, both voted for the contestant and not for the sitting member at the Shullsburg precinct in said county and that neither of them were legal voters in said precinct. The committee without expressing any opinion in regard to particular instances of illegal voting are unanimously of the opinion that the contestant has not made out such a case as entitles him to the seat in the convention now occupied by the Hon. John O'Connor, and a majority of the committee are of the opinion that the Hon. John O'Connor is entitled to the seat now occupied by him. A minority of the committee think it doubtful whether upon a close scrutiny of the votes such would be the case; they are not sure but that the said contestant and the sitting member each received an equal number of legal votes.

"The committee do not think that the alleged violations of law in holding the election in the precinct of Shullsburg ought to affect the question submitted to the committee, for the reason that it is not claimed but that the election was fairly conducted, and that no fraud was attempted or committed. The committee recommend to the convention the acceptance of the accompanying resolution.

E. V. Whiton, Chairman

"*Resolved*, That William S. Hamilton is not entitled to the seat in this convention now occupied by the Hon. John O'Connor."

Mr. Whiton moved that the consideration of said resolution be postponed until tomorrow and made the special order of the day for that day, which was agreed to.

Mr. Prentiss said that in looking over the act of Congress of 1846 in relation to admitting Wisconsin into the Union, as published by authority at Washington, he had discovered that it did not read the same as what purported to be a copy of it, which was appended to the old constitution. The act as appended to the constitution provided that Wisconsin might be admitted into the Union on condition that she should accept the boundaries prescribed therein. The authentic act, he found, did not prescribe any such terms; it did not

require our assent to any boundaries as a condition of our admission. He thought the article we had passed, therefore, accepting the boundaries mentioned in the act, was not necessary. He merely wished to call the attention of the convention to the fact.

The convention then resolved itself into committee of the whole for the consideration of No. 18, article on apportionment of representatives, Mr. Wheeler in the chair.

The bill was read.

Mr. Chase inquired how it was that the counties of Crawford, Chippewa, St. Croix, and La Pointe were allowed only one senator and but one representative. If they were entitled to one senator they were entitled to more than one representative.

Mr. Lovell explained that the apportionment had been made on the principle of compensation. There was great difficulty in making a satisfactory apportionment, and there was no other way in which it could be done. It had been the object of the committee to leave each district represented in both houses; and where a district had not enough population to entitle it to a senator, it was allowed a senator; and to compensate, its representation in the house of representatives was decreased proportionally. Such was the fact in this case, and such was the principle throughout. Where a district had less than its proper representation in the house it had more in the senate and vice versa. In both together it had as nearly as possible what its population entitled it to.

The committee then rose and by their chairman reported the same back to the convention without amendment.

Mr. Rountree said he hoped no action would be taken upon the question at the present time. The census of Grant County as taken last fall was grossly incorrect. The person who had been appointed to take it had acknowledged this and had in consequence given up all claim for compensation for his services in taking it. The board of county commissioners had taken the matter in hand and made arrangements to have it taken over again. The result would probably be here next week. As an instance of the incorrectness of the census first taken, he mentioned that it had been taken over again in the town of Lancaster and showed the number of inhabitants to be one-third greater than by the first. He had no doubt that there were at least three or four thousand more people in the county than

were at first reported. He supposed there was no wish to do Grant injustice, and he hoped, therefore, the article would be laid on the table till the returns of the census now being taken were received.

Mr. King remarked that allowance had been made for the supposed inaccuracy of the census of Grant in the article. They would have been entitled to but three representatives by the ratio adopted; but on a suggestion of the inaccuracy the committee had allowed them four, which was probably as many as the true returns would entitle them to. Mr. Rountree thought not. He thought the correct returns would show that Grant had as large a population as Rock, and Walworth, and other counties, which were allowed five. At all events, he preferred to wait till the returns were received, and he would be satisfied with the representation they would give, be it more or less.

The committee then rose and by their chairman reported the same back to the convention without amendment, when Mr. Rountree moved that the article be laid upon the table, which was agreed to. And a division having been called for, there were 26 in the affirmative and 13 in the negative.

The convention then resolved itself into committee of the whole for the consideration of No. 17, article on education and school funds, Mr. Richardson in the chair.

Mr. Sanders moved to strike out section 9. He remarked that he did this to ascertain if there was any disposition on the part of members to provide for selling the school lands. So far as he had heard any expression on this point among the people at large, it was decidedly opposed to the sale of them. Illinois had sold hers and squandered the proceeds. So it would be with us, if we sold ours. Mr. Kilbourn suggested that the gentleman might obtain his end better by moving to strike out the word "shall" and insert the word "may"; and then it would be left to the discretion of the legislature to sell them when they deemed it expedient. Mr. Sanders liked the suggestion well enough, but instead of leaving it to the discretion of the legislature, as prescribed in this article, he would by all means have it prohibited in the constitution. But to ascertain if the convention could or would in any event favor the sale of the lands, he would adhere to his motion.

Mr. Whiton spoke.

Mr. Kilbourn moved to amend by striking out "shall" in the fourth line, and inserting "may." Then the commissioners would

have power in their discretion to sell them according to law or to withhold them from sale. But it would rest within the legislature to make the law and regulate its term or not to authorize the sale at all. Mr. Root inquired whether the legislature would have power to lease or rent the lands. Mr. Kilbourn said a provision might be added, if desirable, that they should not have that power. Mr. Sanders said that would force the lands into market, and he thought it would be highly inexpedient to do so. The school lands in Racine were probably worth half a million and were rapidly increasing in value. There were doubtless many who wished to have them sold, for their own interests, but he did not think it was for the interest of the school fund that they should be. The improvements made on these lands were a sufficient answer to the argument that lands would not be improved of which the state was landlord.

Mr. Kilbourn thought the provision ought not be inserted in the constitution. It should be left to the discretion of the legislature and would be safe there. Mr. Lovell said he thought the method of selling the land and of taking the securities should be left to be provided for by the legislature. The amendments of the gentleman from Milwaukee would destroy the force of the section and make it inconsistent with itself. It provided that the legislature might sell the lands and then gave the commissioners the power to reserve them from sale. They might disagree and come in collision. He thought it would be safe to leave the whole matter in the hands of the legislature, providing only that they should not apply the money received for the school lands for any other than school purposes. Mr. Kilbourn thought that whatever plan was adopted, it was proper to put it in the constitution. It was true it was going somewhat into detail, but the same was done in other cases and was proper. The same was done in the old constitution and gave great satisfaction. He thought if his amendment prevailed it would leave the matter as it should be.

Mr. Chase said he would vote for the amendment of the gentleman from Milwaukee, but he would also vote for the amendment of the gentleman from Racine—though not for his reasons. He was opposed to making the officers proposed a board of commissioners ex officio. They would be selected on account of other qualities than their fitness for this duty, and they would regard it as merely incidental and of secondary importance. But he would prefer to have the whole matter, both the organization of the board and the sale

of the lands, in the hands of the legislature. It would be a long time before the lands would be sold, or the system of education perfected, and a legislature assembled ten years hence will understand the wants of the people better than we can in advance. Mr. Sanders said gentlemen had misapprehended him. Rather than leave the article as first reported, he would have the sale of the lands prohibited in the constitution. But the way he would prefer would be to have the whole matter left to the legislature. He was opposed wholly to going into detail in relation to it in the constitution; but if we should, he hoped the power would not be given to the commissioners to sell the lands upon credit. Mr. Whiton spoke. The question was taken and the motion prevailed. The question then being on the motion to strike out the whole section, Mr. Whiton made some remarks.

Mr. Jackson said he had been struck with the remark of his colleague (Mr. Sanders) that the lands should not be sold on credit. He wondered what the gentleman would do with the money derived from the sale of the lands. The money could not be lent, for that would be credit, but must be expended as fast as raised, if the gentleman's idea prevailed. He hoped the motion would not prevail.

Mr. Lovell moved to strike out all after the word "appraised" in the fifth line to "paid" in the tenth line. He thought it belonged to the legislature to prescribe the manner of selling the lands, the securities to be taken, etc. He would say one word in reply to the remark of the gentleman from Rock about the commissioners. The secretary of state and auditor, which offices we had provided should be incorporated in one person, were intended as a check upon the treasurer. Now it was proposed to put these two officers together on the board and give them a common interest in the management of the school fund, instead of making them checks upon each other. This was a solecism. He thought there was no propriety in putting those officers on the board. They were not the persons who were most likely to attend to the duties properly. The superintendent would be a more proper person. But he hoped all this detail would be left out of the constitution. Mr. Sanders said that the article provided that the secretary, treasurer, and attorney-general should be a board for the sale of the lands, and were charged with the duty of appraising them. The legislature could sell the lands only on the terms fixed by the board. As to what had been

said about favoritism, there could certainly be as much if the lands were sold on credit, as if for ready pay. A might offer the money, and still the board might sell to B on long credit, if they chose. Mr. Chase hoped the amendment would prevail, if the other did not; but he hoped both would.

Mr. Root said the reason why the committee had constituted the board as they had was this: If no agents had been specified in the constitution, it would have been left to the legislature to select them. This had been done in one state, and the result was that the state had been defrauded out of one-half of the value of the lands. The men who wished to buy the lands and knew their value got a law through the legislature providing for their sale by commissioners, and then got themselves appointed commissioners, and got the lands on their own terms. So it would be with us, if we left the matter to the legislature. The committee had sought to guard the fund by putting the charge of it in high and responsible hands. And he thought there was also a propriety in the officers chosen. The keeping of the funds would very properly pertain to the treasurer, and the title to the lands and all other legal questions concerning them, to the attorney-general. Another consideration in favor of this mode was that it would cause no additional expense to the state. The salaries of the officers were already established, and this was only imposing additional duties upon them. If a separate board were constituted, it would be necessary to pay them, and it would be good economy to pay them roundly. He thought there was no good reason for striking out the section. It was our duty to specify who should have the care of this great interest.

The amendment was lost.

Mr. Chase offered an amendment to the ninth section, substituting the lieutenant governor and superintendent of schools in place of the secretary of state and treasurer. Mr. Whiton spoke in opposition to it. Mr. Estabrook thought it would not be proper to place the superintendent of schools on the board. The qualities required in that officer were of a very peculiar kind—so much so that different states had selected men to fill it from out of the state, looking only to their peculiar fitness. That question had been fully considered in the committee. All writers had agreed that that office should have nothing to do with the machinery of the school system or the management of the funds. He might be a

most improper person for that duty. His province was to put the system in operation. Mr. Chase said if the organization of the board were to be provided for in the constitution, he would prefer the substitute proposed. The lieutenant governor would have little else to do, and both he and the superintendent would be chosen more especially with reference to their fitness for that duty. The vote was taken on the amendment and it was lost.

Mr. Kilbourn offered an amendment to section 9, providing that the members of the board should give security for the faithful discharge of their duties, which was adopted.

Mr. Chase, to take the sense of the convention, moved to strike out the clause fixing the rate of interest at seven per cent. Mr. Kilbourn opposed it. He thought the rate of interest should be stated specifically and should be the same to all. If seven per cent was paid now, it would be unequal and unjust to allow a less rate to those who should take them hereafter. The price of the lands depended very much on the rate of interest, and this was an additional reason for having it fixed and uniform. Mr. Lovell argued from the gentleman's own ground that the rate of interest should be less than seven per cent. It was very true, as he had said, that the price of the lands would, as it were, be fixed by the rate of interest. The more the interest required, the less people would give for the lands, and vice versa. Now the lands were not to be on interest forever. If we fix the rate of interest at five per cent, when the principal comes to be paid, ten, fifteen, or twenty years hence, it would be greater, and we should then need it more. Five per cent would be sufficient for our present need. The interest should be so varied as to yield an annual revenue sufficient, and neither more nor less, for the annual expenditures required. The gentleman's argument showed that the rate should not be fixed in the constitution at all. Mr. Whiton spoke. Mr. Chase thought the rate of interest should not be fixed in the constitution, and if it were, it should not be fixed as high as seven per cent. If the lands were farming lands, the buyer could not afford to pay so much, for the good reason that he could not make so much from the tillage of the land. Mr. Jackson was surprised to hear the gentleman say that, when it was well known that lands were bought every day with money borrowed at twenty-five and thirty per cent interest, and that the buyers made money at that.

Mr. Lovell said gentlemen appeared to have lost sight of the true case of the school fund. It was not our policy to raise the most we could from it now, but only as much as was required for present use, and then to provide for the remainder—so that it should be safe and increasing. We were getting along pretty well now with schools. If an additional sum to the amount of fifty cents a scholar per annum were raised, he thought the supply would be ample to enable every district to maintain a school for the term required by the article. What did the committee report? They said the value of the school lands in the settled portion of the territory was $760,000. It was in reality much higher, as the fact that they had estimated the school section in Racine at $3.00 per acre, when it is actually worth $500,000 in all, sufficiently showed. Let one-third of this be offered for sale, and in three years enough would be sold to amount to $750,000. The interest on this would be immediately available, and at seven per cent it would be far more than we needed. If we desired to make the school fund the most available to the cause of education, now and hereafter, we should lower the rate of interest. If we desired to make it produce the least possible sum in future time, we should establish a high rate. How long would it be before the people who buy the school lands would pay for them? Perhaps five, ten, or twenty years. It was probable that they would be taken rapidly—perhaps the greater portion of them within ten years. We should raise then a large amount of money which we should not need at present and sacrifice the interests of posterity when there is no necessity for it. The better way would be to leave it to the legislature to regulate the interest from year to year, according to the yearly wants of the state.

Mr. Jackson remarked that his colleague had said that an additional sum of fifty cents a scholar would be sufficient for the present necessities of education. Was it possible he thought that could do the whole? It was well known that children could not be kept at school for less than three or four dollars a year; and besides, normal schools and academies were to be established, teachers to be educated, superintendents to be supported, etc. The fifty cents would be nothing towards the accomplishment of all this. As to the interest, he would think his colleague desired to have it reduced to a mere nominal sum. On the contrary, he thought we should get all we could. We needed it. But he suspected this movement was an entering wedge to prepare the way for a grand scheme of internal

improvements, which would dig down all our hills and fill up our valleys, and he hoped it would not prevail.

The question on Mr. Chase's motion was not taken.

Mr. Whiton offered an amendment to the first section, providing that the state superintendent should be elected by the people, and made some remarks in favor of it. Mr. Chase said he wished the gentleman would so modify his amendment as to provide for choosing the superintendent "in such manner as might be prescribed by law." He was in favor of the principle of electing officers in general, but in this case he thought that, at least for some years, it might be better to leave it to the legislature, for the reason that it might be expedient to procure some gentleman from abroad to fill that office. The qualities required in a superintendent were very peculiar, and we might not at this time have just the right kind of man among us. Mr. Whiton declined doing so.

Mr. Kilbourn said he would go against the amendment for many reasons, and among them that mentioned by the gentleman from Fond du Lac. He did not regard the office of superintendent as of the same nature as political offices in general. It was a mere employment, for a specific purpose, unconnected with anything local—as that of a schoolmaster or a professor. Would the gentleman from Rock have our colleges restricted to the state in the choice of professors? He thought we should retain the power to do as our interests seemed to require—not tie up our hands. Another reason was that we might not get the best man the first time, and we should have a power to rectify mistakes. For his part he did not believe the term of the superintendent should be fixed by periods at all. He should be removed whenever the interests of the public required it, and retained as long as they required it. Now it was a general principle, in practice at least, that the power that appoints has the right to remove. If the superintendent were elected by the people, they only could remove him, and the consequence would be that, good or bad, he would serve out a full term. If the governor and senate have the appointing and removing power, we have every guarantee that they will be gentlemen capable of judging and acting with discretion, and if they should make a mistake they can rectify it as soon as discovered.

Mr. Root said he would give some of the reasons which had influenced the committee in fixing upon the plan they had recommended. They had fixed upon no salary. The gentleman from Rock had

fixed upon $1,200 in his amendment. Now he had no objection to this sum if it was sufficient and not too large. But how could they determine this till the duties of the superintendent were determined? The superintendent might be required to spend the greater part of his time in traveling, and if so, the amount would probably be too low. The committee from this, among other considerations, had left it to the legislature to fix the salary when they prescribed the duties. In regard to the appointment by the governor, they had thought, as had been said, that it might be expedient to choose the power from some other state. This could not be done if he were elected by the people. The appointment would have to be done by some agency or delegated power—and if so, what more proper one than the governor and senate, who were the immediate agents of the people? If it were done by election—nominally by the people themselves—it would work thus: Each political party would assemble in its town meeting and choose delegates to a county convention; the county convention would choose delegates to a state convention; and the state convention would nominate the superintendent. Thus he would really be appointed by a large and irresponsible body, three removes from the people, instead of being appointed by their immediate and responsible agents. It was moreover an object to keep the appointment wholly out of the influences of party politics. These were the considerations which had influenced the committee, and he thought the way they had recommended the best that had been proposed.

Mr. Whiton spoke.

Mr. Harvey said he thought the plan recommended by the committee the best. Of late years, both in Europe and in this country, the subject of common school education had received great attention, and information on the subject was anxiously sought for. Many men of the best minds had made the subject their particular study. Many books had been written upon it, and journals established for the purpose of collecting and disseminating the facts in relation to the workings of different systems and the comments of those interested. In this way the study and practice of public instruction had come to assume somewhat the rank of a profession. We wanted a professor of that kind for superintendent—one who knows what has been done in other states and countries—what has worked well and what ill—and who has practical good sense enough to select and put in operation what has been found by experience

to be the best. It was quite likely we might have no such man among us at this time. Then he thought the governor should have power to go abroad and find one wherever he was to be found. He agreed with the gentleman from Milwaukee that the selection of this officer was of the same nature as the selection of a professor in a college. An acquaintance with the particular subject of public instruction, with the peculiar qualities requisite for putting a system in operation with life and energy, was what was wanted. Party politics and place of birth were matters of no consequence. This was the view taken of the matter in other places, and as an instance he mentioned that Dr. Baird, of Pennsylvania, after he had returned from his travels in Europe, whither he had gone to investigate its school systems, was invited by the state of Mississippi to accept the office of superintendent and organize a new system of schools which they were just putting in operation, and was offered $5,000 a year salary. This was real prudence, and it was not probable that the amount could have been expended so advantageously for the cause of education in any other way. So it might be with us, and he thought the provision recommended by the committee on this point was precisely as it should be.

Mr. Jackson moved an amendment, the effect of which was to strike out all relating to the manner of appointment, etc., and to provide that the salary should not exceed a certain sum. Mr. Kilbourn said that to limit the salary of the superintendent was just as objectionable as any other detail on the subject. He thought the whole matter should be left in the hands of the legislature. They would act prudently both in regard to the selection of the person and in regard to his salary. The duties of a superintendent were not of a fixed and well-known kind, like those of political officers. Public instruction was yet in its infancy, though there had been experimenting upon it for the last fifty years. No gentleman could suppose that the services of an eminent scholar or professor of this art could be secured for $1,200 per year. It might be necessary and expedient to pay more. He thought all these questions should be left to the governor and senate, and public opinion would control them in their action upon this as upon all other subjects.

Mr. Whiton spoke.

Mr. O. Cole said he had a much better opinion of the talent of Wisconsin than to suppose it would be necessary to go abroad to find a person fit for the office of superintendent of common schools.

That officer should be a man well acquainted with the business of instruction, but the highest order of talent was not requisite. The case was not that of a professor in a college. A professor had to teach languages, or mathematics, or some other of the sciences, without any regard to circumstances. A superintendent, on the contrary, should have the most particular knowledge of the character, wants, and capacities of the people among whom he was to labor. He should, moreover, feel some state pride and patriotism—feel that he is not a mere hired laborer to illustrate theories, but that he is charged with an important duty in which his children, his friends, and all he holds dear are deeply interested in common. He thought a stranger could not do this as well as a citizen. Moreover, persons taken from abroad would be more apt to have different systems, different books, etc., and each one would seek to carry out his peculiar theories, and thus create confusion. Pedagogues were notorious for foibles of this kind. He thought on these and other accounts it would be best to confine the selection to the state. He thought, moreover, that the people could choose this officer as well as any other, and that they would take a peculiar interest and pride in it.

Mr. Kilbourn said the gentlemen from Grant and Rock spoke as if by the provision we were required to go abroad to select a superintendent. It was not so at all, and the preference would undoubtedly always be given to our own citizens. It was merely allowing a discretion which might be necessary, and he thought it would be in wise and discreet hands.

Mr. Jackson withdrew his amendment.

The vote was then taken on Mr. Whiton's amendment, and it was adopted 29 to 19.

Mr. Kilbourn said in his opinion this article had been drawn up with much care and ability, and he did not think the amendment just adopted had improved it. But he had discovered one error, or at least an ambiguity, and he would offer an amendment to meet it. In the sixth section, each town and city was required to raise annually, for the support of primary schools, a sum not less in amount than one-half that received by such town or city from the income of the school fund. This might be taken to include all they should receive for academies, normal schools, etc. He presumed it was the intention of the committee to limit it to that raised for primary schools, and he moved, therefore, to insert the words "for that purpose" in the third line after the word "respectively." Mr.

Root said such was the intention of the committee. The amendment was adopted.

Mr. Martin offered an amendment to the third section, which was adopted.

The committee then rose and by their chairman reported the article back to the convention with sundry amendments. And the question being on concurring in the amendments of the committee, Mr. Lovell moved that the convention adjourn. The question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 42, negative 14; for the vote see Appendix I, roll call 107].

So the convention adjourned.

FRIDAY, JANUARY 14, 1848

Prayer by the Rev. Mr. Read.

The journal of yesterday was read.

Resolution No. 5, introduced by Mr. Whiton yesterday, was taken up, when Mr. Whiton moved that the consideration of the same be postponed until Monday and made the special order of the day for that day, which was agreed to.

Mr. Reed presented a petition from sundry inhabitants of Winnebago County on the subject of the "Fox River Grant," and moved that the same be referred to a select committee of three, which was agreed to. The President announced the appointment of the following named persons as said committee, to wit: Messrs. Reed, Fox, and Fenton.

Mr. Beall presented a petition from sundry inhabitants of Fond du Lac County, praying that the name of this territory be changed to that of "Columbus," and moved that the same be referred to the committee on miscellaneous provisions, which was agreed to.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 4, article on banks and banking.

Mr. Vanderpoel introduced the following resolution, which was read, to wit: "*Resolved*, That the use of this hall be tendered to the Rev. Mr. Lancaster on next Sabbath for the purpose of divine service."

Resolution No. 2, introduced by Mr. Lovell yesterday, was taken up.

Mr. Judd spoke in opposition to the resolution. Mr. Lovell said that he had supposed that this rule had already shown its imperfections on several occasions since its adoption. No such rule had ever been adopted in any other legislative body under heaven. The forty-first rule of the United States House of Representatives required that the motion to insert and strike out should be indivisible. Mr. Lovell showed several instances in which the rule as it stood must lead to an absurdity.

The question was then put upon the adoption of the same, and was decided in the affirmative.

Resolution No. 1, introduced by Mr. Doran yesterday, was taken up, when Mr. Doran moved to lay the same upon the table, which was agreed to.

The President presented a communication from the Secretary of the territory, containing an abstract of the returns of the census of Winnebago County.*

No. 4, article on banks and banking, was then taken up and read a third time, when Mr. Jackson moved to recommit the article with the following instructions, to wit: "Amend the fifth [second?] section by inserting between the words 'election shall' the words 'on that subject'; also add to the section the words 'on that subject.'"

*See census returns on page 355.

Mr. Jackson said that the article as it stood required for the passage of a banking law a majority of all the votes cast at the election. The object of the amendment was to require a majority of the votes cast on that subject only. Mr. Chase said that he had hoped that the vexed subject of the bank question was settled. He trusted that it would not be recommitted, least of all with instructions to make such an amendment, the result of which would be that if only ten men voted on the subject, six of them would inflict banks on the people.

The question was then put and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 33, negative 28; for the vote see Appendix I, roll call 108].

No. 17, article on education and school funds, was then taken up. And the question being on concurring in the amendments of the committee of the whole, Mr. Jackson called for a division of the question, the question being upon concurring in the first amendment of the committee, which was to strike out the last paragraph of the first section and insert as follows, to wit: "The state superintendent shall be chosen by the qualified electors of the state in such manner as the legislature shall provide. His powers, duties, and compensation shall be prescribed by law: *Provided,* That this compensation shall not exceed the sum of $1,200 annually."

Mr. Lovell moved to amend the amendment by striking out "1,200" and inserting "1,500." And the question having been put upon the adoption of the same, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 28, negative 33; for the vote see Appendix I, roll call 109].

Mr. Kennedy moved to amend the amendment by striking out the proviso.

Mr. Estabrook, in answer to Mr. Whiton's remarks in which that gentleman had adverted to the fact of the salaries of judges being fixed and not subject to increase, whatever might be the amount of their labors, said that there was a very material difference between the case of a judge in this particular and a superintendent of schools. The business of a judge was specifically defined, and every member of the legislature was competent to determine what his services were worth. Such was not the case with reference to the superintendent. His duties would be very arduous—more so probably at first than they would be at any subsequent period. He would have to visit all the different counties in the territory—examine and decide in reference to the schoolbooks to be used. It was impossible to know exactly what duties might devolve upon

this officer; consequently it had been deemed by the committee inadvisable to fix any specific sum for his compensation.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 25, negative 37; for the vote see Appendix I, roll call 110].

The question was then put upon concurring in the amendment, when Mr. Jackson addressed the convention in opposition. It appeared to him to be essential that the office of superintendent should not be in any manner connected with party politics. If the appointment of this officer were left with the governor and senate, as the original article provided, he believed that it would be made without reference to politics, and that regard would be had only to the qualifications for the office. If the choice of the superintendent should be left to a popular election, he must necessarily be elected by party votes. Another objection which he entertained to the amendment was that it fixed the maximum of salary. This was a very important office, perhaps the most so of any in the state. They wanted a man to fill it who would be thorough in business, and well acquainted with the duties which he would be called upon to perform. The services of such a man could not be obtained for a small sum. Gentlemen were getting too democratic in their notions.

Mr. Lakin was in favor of the principal features of the amendment. He was decidedly in favor of limiting the selection of the officer to Wisconsin. There was as great a variety of talent here as anywhere. If we were not able to find a proper officer here, we had better do without the office. He was decidedly opposed to importing a man to fill this office, fresh from the colleges of the East, set in his notions, and believing everyone wrong who had been educated on a different system. The office required a man of some sense; it did not require a linguist or a mathematician. We should stand a better chance of getting a good officer if he was elected from among the Badgers. It had been urged against the election of this officer by the people that they might make a mistake and elect someone who was not properly qualified. Did not this objection apply with equal force to the election of other officers? The election was not for life; and it would be safer to trust it to the honest electors than to a logrolling legislature, for the most part composed of partisans. He was decidedly in favor of having the people rule and believed in the principle of keeping the elements of government as

near to them as possible.

Mr. Doran concurred entirely in the views of Mr. Lakin and regretted only that he had not dwelt on the necessity of a higher salary. The superintendent could not go through the state and discharge his duties on a salary of $1,200. If he possessed powers of ubiquity, there would not be more than he would require for the discharge of his duties. The facilities for traveling in the territory were, as yet, and for some time would be, very insufficient. It would be necessary for the superintendent to provide himself with horses and a conveyance, all of which would involve expense. Persons might be found who would undertake to perform the duties of the office for the salary provided, but they could not perform them properly.

Mr. Whiton here expressed his views.

The question was then put and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 42, negative 18; for the vote see Appendix I, roll call 111].

The second, third, and fourth amendments of the committee, which were: "Second. Strike out in section 3 all to the word 'fund' inclusive, and insert 'the interest of which and all other revenues derived from the school lands.'

"Third. Amend section 6 by inserting after the word 'respectively' in section 3 the words 'for that purpose.'

"Fourth. Add to section 9 'and said officers shall give such security for the faithful performance of their duties as may be required by the legislature'" were then concurred in.

Mr. McClellan moved to amend the article by striking out in section 3 the words "county academy and."

Mr. Root said that it was not the intention of the committee to appropriate the school fund to county academies, as such. The phraseology of the section conveyed a different idea from what the committee intended.

Mr. McClellan said that his objection to the idea of appropriating a portion of the residue to the support of academies was that their benefits were confined to a small portion of the community. Normal schools are to the common schools what the fountain is to the stream. It is to them that we must look for the means of supplying the common schools with competent teachers. Mr. Estabrook said he was a little tenacious about this matter and wished to have the words retained. As a sufficient provision was made for the support of common schools in the first place, he could not see

what objection could be made to giving a portion of the residue for the support of academies. We have an appropriation of seventy-two sections of land for university purposes. We should thus have the two extremes provided for without any provision for the intermediate institutions. How could a system be carried on in this manner? How could the student, after he had passed through the common schools, prepare himself for the university? Scholars would have to be sent to the East for the intermediate portion of their education. Mr. King objected to the amendment on the same grounds as Mr. Estabrook. As regarded the objection made by the advocates of the amendment to academies, that they were not open to the masses, he would propose that for the money which should be received by the academies an equivalent should be rendered by them. Free scholarships might be established in proportion to the amount received, and the most prominent scholars from the preparatory schools might be selected to fill them. The same system might be adopted in the colleges. He hoped to see the time when the fund would be sufficiently large to afford free instruction in all the institutions of the state, from the primary schools to the universities.

Mr. Rountree was opposed to the amendment, though he did not consider a provision for the support of the higher institutions so important as for the common schools. It was necessary to make ample provision for the support of common schools in the first place; then, if there should be a surplus over and above, it could be applied to the support of academies. He had no objection to that, under the circumstances; but he had a great objection to applying the public money to the support of normal schools, if there was any other use for it. Normal schools were intended for the education of teachers; but it was not always found that those educated in them became teachers. They very often employed themselves in other occupations. He did not think that the state ought to provide for the education of a privileged class, but if any distinction was made it should be in favor of common schools.

Mr. Whiton rose merely to ask a question of the mover of the amendment. Suppose, that after providing for the support of the common schools and the normal schools, there should be a surplus—how should it be disposed of?

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the

affirmative were [affirmative 27, negative 35; for the vote see Appendix I, roll call 112].

Mr. Sanders moved to amend the article by striking out section 6 and inserting in lieu thereof the following: "Provision shall be made by law requiring the several towns and cities to raise a tax on the taxable property therein annually, for the support of common schools in said towns and cities respectively."

Mr. Sanders said the article which he proposed to amend required each town or city to raise annually, for the support of the primary schools therein, a sum not less than one-half of that received from the income of the school fund. By looking at the report of the committee we find the school sections amounting to 1,472,000 acres of land. Of this, there were 250,000 acres in the surveyed portion of the territory, estimated to be worth $750,000, which was to be considered as immediately available. With this great fund increasing in value every year, he thought it unjust to make it necessary for the legislature to levy an additional tax equivalent to one-half the interest. He would leave the matter to the discretion of the legislature. It might not be necessary to levy a tax amounting to more than one-fourth or one-eighth of the income of the fund. It was the policy of the state to make the burden as light to the poor as possible and to carry education home to every child within its limits. Suppose the case of a poor town which could not raise, in addition to its other taxes, a sum equal to one-half of its proportion of the interest of the school fund. All the benefits of the fund would be taken from it—it would not receive one cent from the fund.

Mr. Estabrook said that the committee had not reported the provision proposed to be struck out through any carelessness or inadvertency. It was the result of thought and deliberation. It was intended that, whatever the amount of the school fund might be, one-third of the expense of supporting schools should be borne by each town. If a sufficient sum was not contributed by the school fund, the towns should have power to raise more. This provision was directly for the advantage of the poor. The gentleman who had last spoken might not appreciate this, but a poor man with a family of children and no fancy lots to dispose of could understand the advantage. Experience had shown that if nothing was contributed by the town, the common schools languished, and select schools rose on their ruins. The school fund of Connecticut was

so large as to be sufficient to defray the expenses of the education of every child within the limits of the state. Yet there, until a year or two [ago], the district school system had declined. No adequate interest was felt by the people in common schools, unless they contributed to their support. To obviate this danger, the committee had inserted the section.

Mr. Lovell said that if he had any objection to the section at all, it was of a nature directly opposite to that entertained by the gentleman from Racine (Mr. Sanders). His only objection was that it did not require the towns to raise a share sufficiently large. By the provisions of that section, all that was required to enable a district to draw a share of the fund was to support a school for one month. Mr. Sanders remarked that his principal objection was that the section limited the legislature to a certain proportion beyond which it could not go. He wished the matter left discretionary with the legislature.

Mr. Judd made a few remarks in opposition to the amendment.

The question was then put upon the adoption of the same, and was decided in the negative.

Mr. Warden moved to amend section 4 by inserting before the word "children" the word "white."

Mr. King suggested that it would be as well to amend further by inserting the word "free" before "white." Mr. Estabrook proposed that while he was about it the gentleman from Lafayette (Mr. Warden) had better propose to amend by requiring that all the children should have blue eyes. Mr. Lakin did not consider the amendment of the gentleman from Lafayette to be necessary. The matter was one which public opinion would regulate. If in any particular district the people chose to admit colored children to the benefit of the schools, it was perfectly right they should have that privilege.

And the question having been put upon the adoption of the same, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 3, negative 56; for the vote see Appendix I, roll call 113].

Mr. Ramsey moved to amend section 4 by striking out at the end of the section the words "and no sectarian instruction shall be allowed in said schools." And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted

in the affirmative were [affirmative 2, negative 57; for the vote see Appendix I, roll call 114].

Mr. Folts moved to amend section 4 by striking out the words "children between the ages of four and sixteen years" and inserting "persons under the age of twenty-one years."

Mr. Kilbourn was opposed to the amendment because the law recognized all persons under twenty-one years of age to be children. It was hardly to be supposed that many over the age of sixteen would be sent to the primary school. Mr. Vanderpoel apprehended that if the amendment should be adopted, the duties of superintendent would be rather arduous. The minimum age being struck out, primary schools might be made nurseries for infants. Some system must be adopted defining some limitations of age. Mr. Judd was in favor of the amendment.

Mr. Scagel moved to amend the amendment by substituting the word "eighteen" instead of "twenty-one."

Mr. Estabrook said that in one sense we were all "children of a large growth." Unless some provision was made in respect to age, great embarrassment would ensue to the officers who would have the business of the schools in charge. It was not intended by the article to exclude children of whatever age from attending the schools. The money would be distributed, and those between the specified ages would have the advantage of it. The only difference would be that those above the age would not have the benefit of the public fund.

Mr. Judd requested Mr. Folts to modify his amendment so as to strike out the words "children between the ages of four and sixteen" and insert "all persons under twenty-one years of age."

Mr. Chase was in favor of Mr. Scagel's amendment. In some parts of the territory there was a large foreign population who were unacquainted with our language. That amendment would leave the schools free for them to obtain an English education. He could not agree to an amendment which would strike out all ages. It was an injurious system to send children under four years of age to school.

Mr. Doran preferred the amendment of Mr. Judd but was inclined to think that immorality might result from throwing together persons of both sexes of mature years in common schools. Mr. Kinne thought that if any weight was to be attached to the opinion expressed by Mr. Doran, they might as well throw aside the

article entirely. If there was an immoral tendency arising from the association of both sexes at those schools, it would exist in full as much force at an earlier age than that suggested. He preferred to fix only the minimum age. He thought that much greater improvement was made by children over sixteen years of age than under. One-third of the scholars at the common schools in the winter season were over that age. He deemed any feature bad which would exclude from a free participation in the advantage of common schools persons over twenty-one years of age. He held that they were as much entitled to the benefit of the system as those below the age of eighteen.

Mr. Gifford was in favor of Mr. Scagel's amendment.

Mr. Estabrook believed it to be the duty of the convention to provide for a general rule and not for an exception. Gentlemen seemed disposed to provide for the exception and not for the rule. The general rule required that they should provide for the instruction of persons between the ages of four and sixteen years. It was the glory of this country that there were very few who have not received a good common school education at the age of sixteen.

Mr. Scagel said that the object of his amendment was to provide against the circumstance that, owing to the newness of the country, many of the earlier settlers had been deprived for years of the benefit of schools. Meanwhile their children were growing up around them, and many of them were now of or near the age of sixteen. These youth had from the peculiar circumstances in which they were placed no advantages of education. It was to afford them these advantages that he proposed his amendment.

Mr. Jackson hoped that neither amendment would prevail. The object of the convention should be to provide education for the masses. Youth from sixteen to twenty-one were for the most part able to educate themselves. By crowding on the school scholars of a more advanced age, nearly all the time of the teachers would be taken up, and the younger scholars would be neglected.

The amendment was disagreed to.

Mr. Vanderpoel moved to amend the amendment by inserting after the word "persons" the words "over the age of four years," which was accepted by Mr. Folts as a modification of his motion. The question was then put upon the adoption of the amendment as modified, and was decided in the negative. And a division having been called for, there were 24 in the affirmative and 29 in the negative. Mr. Gifford moved to amend section 4 by striking

out the word "sixteen" and inserting the word "seventeen." Mr. Judd moved to amend the amendment by striking out "seventeen" and inserting "twenty."

Mr. Kilbourn said that though there might be some persons over the age of sixteen who had by their unfortunate position been denied the benefits of education, yet at that age they possessed within themselves the ability to provide for their own education. He considered it improper to tax the people for the education of men and women. If persons over that age had not sufficient ambition to defray the expenses of their own education, the people should not be taxed for them to be educated. Mr. Vanderpoel differed from Mr. Kilbourn in his views on this subject, particularly in reference to persons between the ages of sixteen and twenty-one. From the peculiar circumstances which attended the settlement of new countries, the early settlers had been in many cases almost entirely deprived of the benefit of schools. In the sparsely settled portions of the country, schools could not of course be established, and the first settlers were poor men who could not afford to send their children to a distance to be educated. In consequence of this many have grown up to the age of sixteen, and in some cases over that age, without ever having had any opportunity of attending any school. This was the case in some parts of his own county. It was right that they should enjoy the privileges extended to others, and this could be effected only by extending the maximum limit to twenty-one years.

Mr. Richardson said that the gentleman from Milwaukee, Mr. Kilbourn, had argued that if persons over the age of sixteen had not the ambition to educate themselves, the people ought not to be taxed for them to be educated. Was not the gentleman aware that children of poor parents over the age of sixteen and under twenty-one were under the control of their parents? That their parents could not dispense with their services? He was himself a living witness of the fact. At the age of sixteen he was apprenticed, and at twenty-one he was turned loose upon the world without an education. If in the days of his youth there had been a provision similar to that which it was now endeavored to engraft on the school article, it would have been stipulated in his indentures that he should have been sent to school for some portion of the time, because this would have cost his employer nothing except the loss of a portion of his time. In his own immediate neighborhood there was no school, and the people for the most part could not afford the expense of sending

their children abroad and paying their board. He was himself in this position. He had children over fourteen years of age, and who would perhaps be over sixteen before schools were established, and he did not wish to be debarred from the privilege of sending these children to school when the opportunity should be presented.

Mr. Schoeffler said he was opposed to any alteration in the article as it was reported. As regarded the idea which had been suggested that there were many foreigners over the age of sixteen who would desire to avail themselves of the privileges of common schools, so far as his experience was concerned it was not correct. Most of those with whom he was acquainted, who did not understand the English language, preferred to take private lessons. Others would have the advantage of Sunday-schools. He was also opposed, on the same grounds as had been presented by Mr. Doran, to throwing together in common schools men and women. Mr. Sanders made a few remarks in favor of the amendment. Mr. Judd expressed his views. Mr. Schœffler said that he could not see how persons over the age of sixteen were excluded from common schools as the article now stood. The regulation of age had reference only to the distribution of the school fund.

Mr. King made a few remarks in reply to Mr. Judd. Mr. Lovell was in favor of the amendment. Mr. Vanderpoel said there was one point which had thus far escaped gentlemen who had spoken on the subject. There was a feeling of pride which restrained those who were unable to pay their proportion from sending their children to the common schools. This feeling would operate with those persons over sixteen years of age who might need the advantage of these schools, and yet could not afford to pay any charge of tuition. If education was made free to them as well as to younger scholars, that feeling would not operate to deter them. Mr. Schœffler said that he was under the impression that the article as it stood did not exclude persons over sixteen years of age. Under that impression he would vote against the amendment. He wished to be corrected if he was wrong in his understanding of the matter. Mr. Root explained that there was no prohibition.

The question was then put and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 32, negative 28; for the vote see Appendix I, roll call 115].

Mr. Jackson moved that the convention take a recess until half past two o'clock P.M., which was disagreed to.

The question was then put upon the adoption of the amendment as amended, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 44, negative 16; for the vote see Appendix I, roll call 116].

On motion of Mr. O'Connor the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

Mr. Chase, from the committee to whom had been referred No. 4, article on banks and banking, with instructions to amend the same, reported the article as amended, in accordance with the instructions, to wit: "Amend section 2 by inserting between the words 'election shall' the words 'on that subject'; also by adding to the section the words 'on that subject.'"

The question being on concurring in the report of the committee, Mr. Chase called for a division of the question.

Mr. Whiton moved a call of the convention, which was ordered, and Messrs. Fenton, Harvey, Hollenbeck, and Wheeler reported absent.

The sergeant at arms was sent for the absentees.

Mr. Sanders asked leave of absence for Mr. Hollenbeck. Leave was granted. Mr. Jackson moved that all further proceedings under the call be dispensed with, which was disagreed to.

The absentees having been reported in attendance, the question being upon the adoption of the first amendment,

Mr. Beall made some remarks.

Mr. Featherstonhaugh said he had voted against the proposition of the gentleman from Milwaukee (Mr. Larkin) in the form in which it had been adopted, because it required a majority of all the votes cast at any election, not only on the subject of banking, but on all others, before a bank charter could be obtained. This he thought was requiring too much—was unfair. He thought a majority of all the votes cast on that subject was all that could reasonably be required. He would therefore vote for the present amendment and would afterwards vote for the article.

Mr. Chase hoped the convention would not concur in the amendment. He thought a majority of all the votes cast should be required, because otherwise a banking system might be established through the inattention of the people, when, if there had been a full expression of their will, they would have voted it down. A majority was required to elect a president of the United States, and he thought there would be no more unfairness in requiring it to carry a banking system.

The question was then put and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 34, negative 30; for the vote see Appendix I, roll call 117].

The question was then taken upon the second amendment, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 33, negative 31; for the vote see Appendix I, roll call 118].

The question was then put upon the passage of the article, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 51, negative 13; for the vote see Appendix I, roll call 119].

No. 17, article on education and school funds, was then taken up, when Mr. Larkin moved to amend section 5 by striking out after the word "and" in the third line the word "sixteen" and inserting the word "twenty," which was agreed to. And a division having been called for, there were 30 in the affirmative and 23 in the negative.

Mr. Chase moved to amend section 4 by striking out the words "may be" and inserting the word "practicable," which was agreed to.

Mr. Foot moved to amend section 7 by striking out in the third line the word "shall" and inserting the word "may," which was agreed to.

Mr. Case moved to amend section 6 by striking out in the sixth line the word "three" and inserting the word "six."

Mr. McDowell hoped the amendment would not prevail. He hoped gentlemen would consider the case of the sparsely settled districts, where it was with the utmost difficulty that schools could be kept up even three months. If they were to be deprived of the public money unless they kept up schools six months in a year, it would be very injurious to them. Mr. Vanderpoel also hoped the amendment would not prevail. There was no precedent for it in any other state, and it was unjust. He thought that three-months schools were all that should be required to entitle districts to the public money.

The amendment was disagreed to.

Mr. Sanders moved to amend section 8 by striking out the words "at or near the seat of government," which was disagreed to. And a division having been called for, there were 25 in the affirmative and 28 in the negative.

Mr. Castleman moved a reconsideration of the vote taken on the motion of Mr. Foot to amend section 7 by striking out in the third line the word "shall" and inserting the word "may," which was disagreed to.

Mr. Foot moved to amend section 7 by adding "But no appropriation shall be made for such purpose until every child shall have the privilege of a common school education, gratis," which was disagreed to.

Mr. Whiton moved to strike out section 7.

Mr. Whiton said it merely gave the legislature a power which they would have without it. Mr. Kilbourn said the section was more than permissive. It permitted the establishment of an academy in counties which had more than 20,000 inhabitants, but by the rule of construction that the expression of an affirmation excludes the negative, it prohibited the establishment of academies in counties which had less than 20,000. Mr. Whiton thought it should not do so, if it did. Mr. Kilbourn said the gentleman would observe that the prohibition was only in regard to academies, not normal schools; and that before the public fund had so accumulated, there would be an excess above the wants of the primary and common schools. It was probable that most counties would have 20,000 inhabitants. It was only in case of an excess of funds that an academy could be established at all.

Mr. Lovell said that the third section provided that the residue, after the wants of primary schools were established, might be applied to academies, but the seventh section provided in general that the legislature might apply the school fund to the erection of academies. He thought it would bear the construction that the legislature had power to apply the whole fund to the erection of academies. He thought the better way would be to strike out the whole section.

Mr. Root remarked that by the amendment substituting "may" for "shall" the object of the committee in this section had failed to some extent. Their object was that after the common schools were provided for, the residue of the funds might be applied to the support of normal schools and academies. What would probably be the mode in which it would be applied? Probably this: A tax would be levied on the people of a county to build an academy, and when built, an appropriation would be made from the excess of the school fund to aid in endowing it. Now it might have operated with severity on small counties to build an academy in this manner. Hence the article had provided that no such tax should be laid till the population reached 20,000. There was but one county now of that number of inhabitants in the territory. He said the proper application of the school funds was so to apply them as to stimulate private liberality. So in the scheme of the committee, they had said throughout to the towns and counties—if you will raise one dollar, we will give you two dollars. If you will raise $2,000, we will give you $4,000. It was not contemplated by the committee to build

academies with the school fund, but to offer it as a bounty to the counties in case they would build them. When a county contained more than 20,000 inhabitants, there would be in it about 100 district schools, which would require teachers. How were they to be provided? The committee thought by normal schools and academies. The machinery through which it would be done would probably be the supervisors. They would have the control of them and would appoint the teachers thus educated among the towns in some just ratio. Milwaukee would have an academy immediately. Racine would soon have one, and there would be a number in a few years. If the section were struck out, there would be no provision for academies, and as the gentleman from Racine (Mr. Lovell) had said, the whole school fund might be appropriated to academies, or more. There would be no systematic provision. He thought that it was wise to retain the section as it was, but that it would have been better if "may" had not been substituted in place of "shall."

Mr. Sanders said if the provision were retained it would be unjust. The effect of it would be to give the whole benefit of the fund so far as academies were concerned to the larger counties. Such counties as St. Croix, Chippewa, and La Pointe would not probably get any benefit from the academy fund for fifty years. That would be most unjust to them. It should certainly be in the power of the legislature to establish an academy in a sparsely settled district like that he had mentioned for the common benefit of a number of counties—not compel the people to send their children to Milwaukee to be educated.

Mr. Harvey said he thought the convention had been hasty in striking out the word "shall" and had unconsciously undermined the whole system contemplated by the committee. At first it was obligatory on the legislature to establish academies; now it was barely permitted in one case and forbidden in another. We had included all persons between the ages of four and twenty as scholars proper for instruction in primary schools. By the statistics of New York the number of persons between the ages of five and sixteen is found to be one-third of the whole population, and certainly those between the ages of four and twenty among us would be a greater proportion. A county containing 20,000 inhabitants would then have about 7,000 scholars, and they would need 150 or 175 teachers. Should not a county, when it needed so many teachers, have an

academy to prepare them? He hoped some gentleman who had voted to strike out "shall" would move to reconsider the vote.

Mr. Castleman moved a reconsideration, but was not heard by the President.

Mr. Kinne hoped the whole section would be struck out, because he believed, if retained, it would endanger the proper application of the school fund. The counties containing over 20,000 inhabitants would be continually making efforts to get all they could by the school fund for the benefit of their academies. He had no doubt it was the intention of the committee that the school fund should not be appropriated to the erection of academies, but they had not provided against it in the article they had reported. Under that article it might and probably would be done. He said that until we saw the practical working of the school fund we could not tell how much revenue it would yield. Gentlemen assumed that it would be ample for all purposes, but we were not sure of it, and we had better wait and see—not bind the legislature by a constitutional provision to establish academies when the fund might not be sufficient to bear it. As to the equality of the proposed academy system between counties, there was but one now entitled to any benefit under it, and though it was said that several others soon would be, yet it should be remembered that most of them might and probably would be divided, so that they might never get any benefit from it. It was impossible to have one academy for a number of small counties, but they must wait till each had 20,000 inhabitants. The gentleman from Rock (Mr. Harvey) had said that the word "shall" should be restored and then the legislature would be obliged to establish academies in counties containing over 20,000 inhabitants and might establish them in counties containing less, in their discretion. Striking out the whole section would leave the whole power in their hands, and he thought it would be preferable.

Mr. Estabrook hoped his colleague and the gentleman from Racine (Mr. Sanders) might each be blessed with a wife and half a dozen children; and then he was sure they would think differently in regard to this matter. He had never seen any man with a family of children to educate who thought the school laws were too stringent or required too much. He thought that striking out the word "shall," which made it imperative upon the legislature to establish academies and normal schools, was undermining the whole system proposed. It was a notorious fact that while

education is the most important of all interests, it is the one in which there is the least concern felt by the community in general or by their representatives. Orators might, on public occasions, talk largely of the necessity of education, or glorify over the morale of intellect, and the people assent to it all; but the truth was, a perfect apathy pervaded the entire community in relation to it. People looked upon schools as merely a place for sending their children to get rid of them; they rarely or never visited them, or took the pains to ascertain how they were conducted. It was in view of this state of facts that the committee had made it obligatory upon the legislature to put in operation the school system throughout. As to the number of inhabitants required when an academy was required to be established, if the number was thought to be too high, he was willing to modify it, but he was not willing that the whole section should be struck out and the whole binding force of the system taken away.

Mr. Sanders said he had supposed the gentleman from Walworth was his friend, but he began to doubt it when he saw him wish to saddle him with a wife and half a dozen children. The gentleman had said that his main object was to make the carrying out of the system obligatory, and that the legislature would still have power in their discretion to establish academies in the small counties. True the legislature might authorize the establishment of academies in small counties, but only at the expense of those counties. The gentleman must know that by the article as it stood they could not apply the public money to that purpose. It was very true that academies and normal schools were necessary; and it was true that the smaller counties wanted the benefit of them. Under this plan it would be years and years before the smaller counties could derive any benefit from them. Gentlemen must see this; and especially members who represent the smaller counties must see it. It was unjust to them and injurious to the cause of education, and he hoped it would be struck out. To try the sense of the convention he would move to reconsider the vote striking out the word "shall." Mr. Judd spoke. The motion to reconsider was lost.

The motion to strike out was agreed to.

Mr. O'Connor moved to amend section 6 by striking out in the second line the word "one-half" and inserting "one-third, nor a sum equal to," which was agreed ["disagreed" in MS] to.

Mr. Lovell moved to amend section 3 by striking out the second clause and inserting: "Second. To the support and maintenance of one or more normal schools, with suitable libraries and apparatus therefor.

"Third. The residue shall be applied to the support and maintenance of academies in different counties of the state, in proportion to the population therein," which was disagreed to. And a division having been called for, there were 19 ["10" in MS] in the affirmative and 30 in the negative.

Mr. Pentony moved to add to section 8 the following: "And no sectarian instruction shall be allowed in said university," which was agreed to.

The question was then put upon ordering the article to be engrossed and read a third time, and was decided in the affirmative.

The convention then resolved itself into committee of the whole for the further consideration of No. 12, article on internal improvements, Mr. Beall in the chair.

Mr. Fox said he did not intend to make a long speech about the prosperity of New York or the troubles of Michigan, on the score of internal improvements; but he was willing to weigh arguments. If other states had been imprudent or unfortunate in carrying out systems of internal improvements, it was no reason for prohibiting them among us, but only for greater caution. He did not think because one man got drunk that the making of brandy should be prohibited. These improvements were absolutely necessary to develop the resources of the state, and it was not wise to put it out of our power absolutely to make them. The misfortunes of other states had prejudiced the people against any system of the kind at the present, and it might be very proper; at all events, it would afford a strong guarantee that they would not sanction by their votes any scheme which might be proposed to them, unless it were a proper one. He merely wished to give the legislature power to submit a law to the people. It was proper to do this at any time, and it was right to make the improvement whenever the people were in favor of it and were willing to tax themselves for that purpose. His proposition did not permit the creation of any state debt. He thought that if speculators would not make the improvements required, we should retain the power to make them ourselves. We might provide for tying up the people's hands, but we could not tie up their votes. If any gentleman, however, could improve upon the proposition he had made, he would be glad to see it. Mr. Chase was sorry he could not go with his Democratic friend in this matter. He thought that before the people would be willing to vote for any scheme of internal improvements to be carried out by the state, the con-

stitution we were forming would have lived out its time, and a new one been adopted. At any rate, the people were strongly opposed to it now, and he did not want to encumber the constitution with any such unpopular provision. The amendment was adopted, 23 to 14.

Mr. Martin offered an amendment to section 3, the effect of which was, when a donation had been made for any particular improvement and was not sufficient for that purpose, to allow the state to pledge the revenues of the work to raise means to complete it.

Mr. Whiton opposed it, as leaving open the door for a system of internal improvements and the creation of a state debt.

Mr. Martin said the gentleman must have shut up his ears, for the amendment prohibited the very thing he feared. It merely gave power to pledge the revenue of the incomplete work to any person or company which would complete it. The idea was drawn from the state of Michigan. She found herself a few years ago with the Central Railroad on her hands, partly completed, without the means of finishing it. So she made an arrangement with a company in Boston to complete it, and keep it till they had paid themselves out of the revenue of it, and then it would revert back to the state. There was no debt incurred—no credit of the state pledged. He was prompted to offer the amendment in consequence of a grant of land having been made by Congress of 300,000 acres for the improvement of Fox River. The estimated expense of that work was $260,000. It was possible that by bad management the lands might not suffice for the completion of the work, and out of abundant caution he had proposed his amendment.

Mr. Whiton suggested an alteration of the amendment. Mr. Martin said he did not pretend to be a linguist, and the long discussion he had listened to that afternoon on education had not improved him any, even though the gentleman from Rock had participated largely in it. His intention was the same as that of the gentleman from Rock, and he would be obliged to him if he would clothe it in proper language. As to the insinuation that he had intended to get anything into the constitution blindfolded, he repelled it. It was false. His design was simply what he had stated.

Mr. Chase said he was in favor of the amendment, as intended by the gentleman from Brown, but he thought with the gentleman from Rock that the language would bear another construction. He hoped it would be amended.

Mr. Martin modified his amendment so as to read: "but may pledge or appropriate the revenues to be derived from such work towards its completion."

Mr. Reed hoped the amendment would prevail. It was a matter of great consequence to provide for such a contingency as that contemplated. There was no question but that if the fund were properly managed, it would be sufficient; but if it should not be, then, unless the amendment were adopted, it could not be completed at all.

The amendment was adopted.

The committee then rose and by their chairman reported the article back to the convention with amendments, and asked the concurrence of the convention therein.

The question being on concurring in the amendments of the committee, Mr. Chase called for a division of the question. The question was then put upon concurring in the first amendment, which was to amend the article by inserting the following to stand as section 2: "The legislature shall have power at any regular session to pass a law authorizing a work of internal improvement. Such law shall embrace but one work or object of improvement, which shall be distinctly specified therein and have but two points of termination. And such law shall provide for levying a tax sufficient, with other sources of revenue, to complete said work within — years after the passage of the same. And no such law shall be valid or take effect unless the same shall have been submitted to a separate and distinct vote of the electors at the next general election succeeding the passage of said law and shall have received in its favor a majority of all the votes cast at such election on that subject."

Mr. Sanders said that since the amendments which had been made in committee of the whole, he hoped the amendment would not be concurred in. Mr. King said the adoption of the amendments, he thought, was a good reason why it should prevail. He thought not only that Fox River should be improved, but that the Lake Michigan and Mississippi Railroad should be built, and other improvements made, or at least a chance left for making them.

Mr. Gale said he had hoped that no one would attempt to force into the constitution any provision which would allow our state to plunge into the gulf of internal improvements, which had swallowed up the credit and prosperity of so many of our sister

states. He was opposed to the amendment offered by the gentleman from Dane (Mr. Fox) and to the whole system. The state is not the proper person or the proper party to carry on that system; neither did he believe it to be within the legitimate duties of a state government, for the reason of its unequal benefits to the whole people. The state could not carry on such works in as economical a manner as private individuals or joint stock corporations. The actual costs of the necessary legislation during the progress of the work is always a very large item in the sum total of the cost of such work. The state of New York had been quoted as having prosecuted works of internal improvements with complete success, but he thought that gentlemen would find that their works had cost nearly twice as much as they would if prosecuted by private corporations. Their legislation alone on that subject had not only been the source of many bitter feelings, but had cost the state many hundred thousand dollars. The cost of legislation in this territory, on the Milwaukee and Rock River Canal, had, without doubt, far exceeded the amount actually expended on the work.

But had the people demanded that such works should be carried on by this state? He believed they had not. The provision prohibiting these works by the state, in the last constitution, gave unusual satisfaction to the people, as far as he had heard an expression. Indeed, that article had been often pointed out as one of the strongest reasons for supporting that instrument. If this amendment was adopted, he feared it might endanger the adoption of the constitution. In fact, one of the strongest arguments against the formation of a state government was that as soon as the government was formed the state would plunge into such works and become bankrupt like most of the northern states. He had always combated that argument by the assertion that Wisconsin had learned a lesson from the other western states they would not soon forget; but he now feared the argument was too true.

It is contended that the provision that the law shall be submitted to the people before it takes effect is a sufficient protection; but he could see how it might be carried by the chartering of a railway from Milwaukee to the Mississippi through to the most populous part of the state; and by combining interests a majority could be obtained for it. The minority of the people

would then be loaded with taxes to construct a work that would not be of an advantage to them of one dollar. He believed it was the duty of government to make the benefits to be derived from taxation as equal as the burdens, and not tax large minorities for the sole benefit of the majority. Without following this principle the great objects of civil government would be lost. He was anxious that the constitution adopted by this convention should be one conferring equal benefits to all.

Mr. Fox said if the gentleman referred to him in his remarks about the consistency of members in voting to leave this subject to the people, when they had voted to leave the banking question to them, he would inform him that he had been consistent—he had voted to leave the bank question to the people, as the journal would show. As to the arguments he had gone into, he did not consider them of much weight. It seemed clear to him that if the people were able and willing to make any improvements, they should have the power to do so. Mr. Castleman said he would suggest an amendment which he doubted not the gentleman from Dane would gladly accept. It was to strike out the words "on that subject." The gentleman had been very strenuous for that principle on another occasion, and it was an old maxim that "what was sauce for the goose was sauce for the gander."

The question was then put upon the adoption of the same, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 30, negative 29; for the vote see Appendix I, roll call 120].

Mr. Sanders moved that the convention adjourn, which was disagreed to. And a division having been called for, there were 26 in the affirmative and 29 in the negative.

The question was then put upon the second amendment, which was to insert [after] the words "dedicated thereto" the following: "and may pledge or appropriate the revenue to be derived from such work towards its completion," which was agreed to.

Mr. Sanders moved that the convention adjourn, which was agreed to. And a division having been called for, there were 35 ["38" in MS] in the affirmative, negatives not counted. So the convention adjourned.

SATURDAY, JANUARY 15, 1848

Prayer by the Rev. Mr. Lord.

The journal of yesterday was read.

Mr. Gifford presented two petitions from the inhabitants of Waukesha County on the subject of homestead exemption. Mr. Chase moved that the same be referred to the committee of the whole, which was agreed to.

Mr. Chase introduced the following resolution, to wit: "*Resolved,* That the committee on general provisions be instructed to report an article on amendments to and revision of this constitution." And the fifth rule having first been suspended for that purpose, the said resolution was adopted.

Resolution No. 1, introduced by Mr. Vanderpoel yesterday, was taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

Mr. Sanders gave notice that he would move a reconsideration of the vote taken on the tenth instant on the passage of No. 5, article on boundaries.

No. 12, article on internal improvements, was then taken up, when Mr. Harrington moved a reconsideration of the vote taken yesterday on concurring in the first amendment of the committee of the whole. And the question having been put, it was decided in the affirmative. The question then recurred on concurring in the amendment of the committee, when Mr. Folts moved to amend the amendment by adding as follows: "*Provided,* That no law authorizing any internal improvement be submitted until the improvement previously submitted and adopted be finished and paid for." The question was then put upon the adoption of the same, and was decided in the negative. And a division having been called for, there were 20 in the affirmative and 23 in the negative.

Mr. Doran moved to amend the amendment by striking out the words "and have but two points of termination." And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 24, negative 36; for the vote see Appendix I, roll call 121].

Mr. Chase moved a call of the convention, which was ordered, and Messrs. Biggs, Crandall, Harvey, and Warden reported absent. Mr. [Colley] moved that Mr. Crandall be excused from his attendance, which was agreed to.

The sergeant at arms was sent for the absentees. Mr. Jackson moved that all further proceedings under the call be dispensed with, which was disagreed to.

The sergeant at arms having reported the absentees in attendance, [the question being upon concurring in the amendment of the committee,]

Mr. Sanders said he would vote against the amendment. It was entirely different from that which he had proposed and which had reference to the improvement of the navigable waters leading into Lake Winnebago and the Mississippi River. These he considered the great objects of internal improvement in Wis-

consin, and he could not vote for any system which would be inconsistent with this object.

Mr. Kilbourn thought the subject before the convention was one which ought not to be discussed, as he thought the minds of members were made up on it, and made up in the negative. It was true that the vote of yesterday was calculated to lead to a different conclusion. It was proposed by the amendment to mark out a course by which internal improvements might be made; yet that course, if attempted, would prove an entire failure. Such a clause inserted in the article might induce the legislature to pass some time in legislating upon the subject of internal improvements, and by so doing involve a certain expense, without any corresponding good, for no law providing for the construction of any single work of internal improvement as provided by the amendment would be sanctioned by the people.

Mr. Judd spoke briefly in favor of the amendment.

The question was then put upon concurring in the amendment of the committee, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 28, negative 36; for the vote see Appendix I, roll call 122].

Mr. Sanders moved to amend the article by substituting the following:

"Section 1. This state shall encourage internal improvements by individuals, associations, and corporations, but shall not carry on, or be a party in carrying on, any work of internal improvement except in cases authorized by this article.

"Section 2. The legislature shall have power at a regular session to pass laws authorizing the improvement of the navigable waters leading into the Mississippi or Lake Michigan and the carrying places between the same: *Provided,* however, That the legislature shall not pass more than one act at the same session, and such law shall embrace no more than one object of improvement, which shall be singly and specifically stated therein.

"Section 3. Every such law shall impose and provide for the collection of a direct annual tax to pay [and sufficient to pay] the interest on the debt that may be incurred by such works as fast as the same shall fall due, and also to pay and discharge the principal of such debt within fifteen years from the time of the contracting thereof.

"Section 4. On the final passage of such law in either house of the legislature the question shall be taken by ayes and noes, to be duly entered on the journals thereof. No such law shall take effect until it shall at a general election have been submitted to the people and have received a majority of all the votes cast at such election.

"Section 5. The legislature may at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same and may at any time by law forbid the contracting of any

further debt or liability under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted in pursuance of such law, shall remain in force and be irrepealable and be annually collected until the proceeds thereof shall have been sufficient to pay and discharge the interest and principal of such debt and liability.

"Section 6. The money arising from any loan or stock creating such debt or liability shall be applied to the work specified in the act authorizing such debt or liability, and for no other purpose whatever.

"Section 7. The state shall not at any time incur or create debts or liabilities for works of internal improvement which shall singly or in the aggregate exceed $300,000.

"Section 8. No such law shall be submitted to be voted on within four months after its passage or at any election where any other law or any bill or any amendment to the constitution shall be submitted to be voted for or against.

"Section 9. When grants of land or other property shall have been made to the state, especially dedicated by the grant to particular works of internal improvement, the state may carry on such work and shall devote thereto the avails of such grants so dedicated thereto."

And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 9, negative 54; for the vote see Appendix I, roll call 123].

The question was then put upon ordering the article to be engrossed and read a third time, and was decided in the affirmative.

The convention then resolved itself into committee of the whole for the consideration of No. 5, resolution relative to public lands, Mr. Fenton in the chair.

Mr. Prentiss proposed to amend the first section by dividing it into two separate sections, each embracing a distinct subject, so that if Congress should reject the proposition contained in one of them, they might still adopt the other. Mr. Prentiss' amendment was adopted.

Mr. Castleman moved that the committee rise and report the resolutions back to the convention as amended.

Mr. Judd hoped that the gentleman would withdraw his motion. He wished the subject matter of these resolutions to be more fully discussed, and was by no means clear as to the propriety of them as they stood. Mr. Judd went on to state his objections. Mr. Castleman withdrew his motion.

Mr. Prentiss thought that the gentleman from Dodge, as a member of the last convention, ought to be familiar with the subject matter of these resolutions, as they passed that body almost unanimously. Whatever amount of the odd sections might

have been sold, that amount the state would owe to the school fund. If none, then the state would hold them for the benefit of the school fund. It would make no difference in point of fact what might have been the amount of canal lands sold.

Mr. Judd replied. Mr. Prentiss explained. Mr. Vanderpoel said that about 100,000 acres of these lands had been disposed of, which, as a matter of course, must create a debt either to the school fund or to Congress. His individual feeling about the matter was that as a part of the fund arising from this source had been expended in making constitutions no debt should be incurred by the state on this account, but that it should be deducted from the five hundred thousand acres due to the state, the balance of which should be given to the school fund.

Mr. Chase was not aware whether more than $1.25 had been paid for the land sold by the territory. If it had, would not we owe the excess to individuals?

Mr. Vanderpoel said that the fact in reference to the excess was that the greater portion of the settlers on the canal lands had purchased and settled on them and paid $2.50 per acre, in view of the canal being constructed. The canal bubble had burst. They, being the losers, required buyers to refund the excess of $1.25 per acre over the government price, inasmuch as the object by which they were induced to pay the additional price had entirely failed.

Mr. Castleman said that the grant from the government required that the lands should not be sold for less than $2.50 per acre. Accordingly they were so sold at the first sale, but only ten per cent of the purchase money was paid down, and the rest left at a long credit. By subsequent legislation $1.25 of the purchase money had been remitted. There were a very few purchasers, however, who paid down the full amount of $2.50 per acre and obtained their patents at once. By subsequent acts of the legislature their interests also had been taken care of. The debt now remained on the territory and was to be paid to somebody. It seemed better that it should be so arranged as to be paid here among ourselves than to Congress. When Congress made the grant and fixed the minimum price of the even sections at $2.50, it in fact gave nothing; for if it gave away one half, it sold the other for a double price. The resolutions proposed to Congress to take the lands at $1.25 per acre and put the purchasers of the

even sections on the same footing on which "we" had placed the purchasers of the odd sections. The settlers on the canal lands had held several meetings and adopted almost unanimously such resolutions as seemed to them to be right in regard to the remission of the excess of price.

Mr. Whiton expressed his views on the subject and was in favor of a resolution to form one of those presented [sic], requiring the legislature to refuse its assent to the act of Congress.

Mr. Prentiss said that had been omitted because it was deemed superfluous. The grant having expired from its term, there was no necessity for the first legislature to express assent or dissent. The grant required that the legislature should give its assent in positive terms, and a neglect to do so would be considered a dissent. Mr. Bishop here offered a resolution to stand as number one, requiring that the legislature at its first session should refuse its assent to the act of Congress. Mr. Chase could see no necessity for the adoption of this resolution. We could not have a legislature in time to accept the grant, and if it could not accept, it could not refuse in time to be of any benefit. He was opposed to it as unnecessary and superfluous. Mr. Martin hoped the resolution would not be adopted. The action of the convention seemed to be predicated on the supposition that Congress would approve the resolution. Now if the resolution should be adopted, and Congress should not approve, the lands would revert to the United States, and 175,000 acres of land would be withdrawn from the five hundred thousand acres appropriated to the school fund. The act originally required this to form part of the five hundred thousand acres. The idea had been suggested that we had created a debt and would be liable to pay to the United States the value of the land sold. This was utterly untrue. The act of 1841 protected the state from that. Even if every acre had been squandered, the state would not be liable to the general government, for the act of 1841 makes the grant absolute to the state.

The question was then taken on Mr. Bishop's amendment, and it was rejected.

The committee then rose, and by their chairman reported the resolution back to the convention with an amendment.

The question was then put upon concurring in the amendment of the committee, which was to strike out all after "United States" in the sixteenth line of the first resolution and insert the following to stand as section 2: "*Resolved,*

That Congress be further requested to pass an act whereby the excess price over and above $1.25 per acre, which may have been paid by the purchasers of said even sections which shall have been sold by the United States, be refunded to the present owners thereof, or they be allowed to enter any of the public lands of the United States, to an amount equal in value to the excess so paid as aforesaid"; and was decided in the affirmative.

The question was then put upon the adoption of the resolution as amended, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 56, negative 3; for the vote see Appendix I, roll call 124].

Mr. Richardson moved that the convention take a recess until two-thirty o'clock P.M., which was agreed to.

HALF PAST TWO O'CLOCK P.M.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 12, article on internal improvements.

Mr. Case moved that the convention adjourn. And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 22, negative 20; for the vote see Appendix I, roll call 125].

So the convention adjourned.

MONDAY, JANUARY 17, 1848

Prayer by the Rev. Mr. Lord.

The journal of Saturday was read.

Resolution No. 5, reported by Mr. Whiton from the committee on the contested seat of Mr. O'Connor on the thirteenth instant, was taken up, when on motion of Mr. Whiton it was ordered that in the case of the contested election, the consideration of which is made the special order of the day, the contestant shall be first heard by himself or his counsel, and then the sitting member by himself or his counsel, and afterwards the contestant may again be heard by himself or his counsel, after which neither party shall again be heard on the subject.

(Mr. Hamilton addressed the convention at great length in support of his right to the seat occupied by Mr. O'Connor. As the proceedings on this question form no part of the regular business of the convention, they are omitted.)

The question pending being on the adoption of said resolution, Mr. Fitzgerald moved that the convention take a recess until half past two o'clock, which was agreed to.

HALF PAST TWO O'CLOCK P.M.

The question pending being on the adoption of the resolution relative to the contested seat, which was "*Resolved*, That William S. Hamilton is not entitled to the seat in this convention now occupied by the Hon. John O'Connor,"

(Samuel Crawford Esq., counsel for Mr. O'Connor, sustained in a lengthy argument the right of that gentleman to the seat he held in this convention, which was contested by Mr. Hamilton. Mr. Dunn, who had been adverted to in the course of the argument, made some remarks in explanation of the action he had taken.)

And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 63, negative 2; for the vote see Appendix I, roll call 126].

On motion of Mr. King the convention adjourned.

TUESDAY, JANUARY 18, 1848

Prayer by the Rev. Mr. Read.

The journal of yesterday was read.

The following petitions were presented on the subject of homestead exemption, to wit: by Mr. Chase, from inhabitants of Fond du Lac County; by Messrs. Davenport, Sanders, Secor, and A. G. Cole, from inhabitants of Racine County; which were referred to the committee of the whole. Mr. Prentiss presented a remonstrance from sundry inhabitants of Dodge County on the same subject, which was referred to the same committee.

Mr. Sanders presented a petition from sundry inhabitants of Racine County on the subject of school lands, which was referred to the committee on education and school funds.

Mr. Case, from the select committee on that subject, made the following report, to wit:

"The select committee appointed to ascertain the probable cost of printing and binding the journal and sketches of debates of this convention report that they have had the subject under consideration and have received the following communication from the printers in answer to the inquiry made by the committee, which is herewith submitted as a part of this report:

"Respectfully submitted

S. S. CASE
S. A. DAVENPORT
JOHN O'CONNOR"

Messrs. Case, Davenport, and O'Connor

GENTLEMEN: In compliance with your request to furnish an estimate of the probable expense of printing the journal of the convention, we have the honor herewith to submit a statement as correct as can be made at this time:

[Editor's Note: The following figures appear to have been corrected by the first editors of the manuscript journal.]

Composition—65 cents per 1,000 ems.

Each page contains 1,750 ems.

100 pages composition	$113.75
400 pages composition	455.00
500 pages composition	568.75
600 pages composition	682.50
700 pages composition	796.26
800 pages composition	910.00

Press Work—per token, 65 cents.

On 400 pages	$ 97.75
On 500 pages	122.85
On 600 pages	148.20
On 700 pages	175.55
On 800 pages	198.90

Stock—per ream, $5.00; for 500 copies (500 pages) about $250.00

Each additional hundred pages, about 8½ reams, at the same price.

Binding—In pasteboard, same style as the journal of last convention, we are informed can be obtained at from 30 to 40

cents per copy. Say 35 cents, 500 copies $175.00

The resolution calls for information as to the cost of the debates, separate from the mere journal. We cannot give any definite information on this subject, for the reason that we have no data upon which to predicate an opinion. In the first ninety pages (now printed) the journal greatly exceeds in length the debates. It is our opinion, however, that when the volume is completed, the debates will fully equal, if they do not exceed, the journal in length.

The last convention was in session over twelve weeks, and the journal, though stretched to 506 pages as printed, would not make over 250 pages in the volume we are printing. The journal of the present convention in all probability cannot exceed 250 pages. Estimating the debates at 300, the whole volume will contain 550 pages, and the cost as estimated would be as follows:

Composition	$625.62
Presswork	122.85
Paper and ink, etc., about	250.00
Binding, etc.,	175.00
Total	$1,173.47

This, we believe, will not vary far from the actual cost of the work.

In conclusion we beg leave to add that we are printing this work on entire new type, ordered expressly for the occasion; that we have incurred an extra expense of $5.00 per day in employing additional reporters, and that we have secured as competent and accurate ones as can be found in Wisconsin. The index for the work will be prepared on the plan of the journal of the New York convention and will be an extra charge. We design to have the whole volume finished in the best possible style—such an one as will prove an honor to the convention.

In regard to price, we shall charge the customary rates in all cases—rates never complained of by the legislature, and which will only afford us a fair compensation. We should deem it derogatory both to ourselves and to the craft to accept of prices below fair remuneration for services, use of capital, etc., and if there is to be any cutting down from the usual prices, thus putting our establishment on a footing with "rat offices," we shall be under the necessity of asking the convention to accept of our labor and that of our workmen, without pay, as we can recognize no medium between a fair, living profit for our labor, and giving it to the public gratuitously.

The journal will be completed at the earliest practicable moment.

Very truly yours,

TENNEY, SMITH AND HOLT

Mr. Chase moved that the same be laid upon the table and ordered printed, which was agreed to.

Mr. Reed, from the select committee on that subject, reported the following resolutions, which were read, to wit: *"Resolved*, That the Congress of the United States be and is hereby requested, upon the admission of this state into the union, so to alter the provisions of the act of Congress entitled 'An Act to grant a certain quantity of land to aid in the improvement of the Fox and Wisconsin rivers and to connect the same by a canal, in the territory of Wisconsin,' that the price of the lands reserved to the United States shall be reduced to the minimum price of the public lands.

"Resolved, That the legislature of this state shall make provisions by law for the sale of the lands granted to the state in aid of said improvements,

subject to the same rights of preëmption to the settlers as are now allowed by law to settlers on the public lands."

Mr. Chase, from the committee on banks, banking, and incorporations, reported No. 19, article on incorporations, as follows:

INCORPORATIONS

"Section 1. Corporations without banking powers or privileges may be formed under general laws, but shall not be created by special act except for municipal purposes and in cases where in the judgment of the legislature the objects of the corporation cannot be attained under general laws. All general laws or special acts coming under the provisions of this section may be altered or repealed by the legislature at any time after their passage.

W. CHASE, Chairman"

Said article was read the first and second times and ordered printed.

Mr. Kilbourn, from the committee on general provisions, reported No. 20, article on amendments, as follows:

AMENDMENTS

"Section 1. Any amendment or amendments to this constitution may be proposed in either house of the legislature, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon and referred to the legislature to be chosen at the next general election; and shall be published for three months previous to the time of holding such election; and if in the legislature so next chosen as aforesaid such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment or amendments shall become part of the constitution: *Provided,* That if more than one amendment be submitted, they shall be submitted in such manner that the people may vote for or against such amendments separately.

BYRON KILBOURN, Chairman"

Said article was read the first and second times and ordered printed.

The President announced the appointment of the following committee on revision and arrangements, to wit: Messrs. Dunn, King, Larrabee, Whiton, and Lovell.

Resolutions were introduced and read as follows, to wit:

By Mr. Lakin: "*Resolved,* That on Tuesday evening, January 25, A. D. 1848, this convention adjourn sine die."

By Mr. Carter: "*Resolved,* That this convention allow Horatio Tuttle $2.50 per day as compensation for his services during the sitting of this convention."

By Mr. Foot: "*Resolved,* That the committee on miscellaneous provisions be instructed to report a provision by which the governor may by proclamation, in case of emergency, convene the legislature at any other time than that prescribed in the constitution, and that in case of invasion or danger from the prevalence of contagious diseases at the seat of government, he may in like manner convene it at any other suitable place within the state."

By Mr. Chase: "*Resolved,* That the committee on education be directed to inquire into the expediency of providing a coat of arms for the state, and to report such as they deem proper, if in their opinion it is expedient for this convention to adopt any."

By Mr. Lewis: "*Resolved,* That a respectful address be presented to the people of this territory, with the constitution that shall be approved by this convention, and that a committee of five members be appointed to draft and report the same to this convention."

By Mr. Sanders: "WHEREAS, the doorkeeper elected by this convention has vacated his office and left the convention without any officer to perform the necessary duties for which he was appointed; therefore *Resolved,* That Daniel N. Johnson be appointed doorkeeper pro tem."

Mr. Sanders moved a suspension of the fifth rule for the adoption of the resolution now, which was disagreed to.

No. 12, article on internal improvements, was then taken up and read the third time. And the question having been put upon the passage of the article, it was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 50, negative 15; for the vote see Appendix I, roll call 127].

No. 18, article on apportionment of representatives, was then taken up. Mr. Chase moved that the same be recommitted to the committee of the whole, which was agreed to.

The convention then resolved itself into committee of the whole for the further consideration of No. 18, article on apportionment of representatives, Mr. Wheeler in the chair.

Mr. Case moved so to amend as to give to the county of Waukesha two senators in place of one, and four members in the house instead of five. Mr. Case remarked that by the article as reported by the committee Waukesha had an unrepresented fraction of about 4,000. To remedy this inequality, he proposed to reduce the representation one in the house and increase it one in the senate, which would add one to the total of units of representation for that county. If that motion did not prevail, he would feel constrained to move that one be added to the representation now apportioned to that county in the house.

Mr. Lovell remarked that by adopting this amendment it would become necessary to run through the whole article and change the representation of every county in the territory. The amendment involved the necessity of an entirely new apportionment. Mr. Lovell went into a series of calculations to show the difficulty of making the proposed amendment without unsettling the entire apportionment. The county was underrepresented in the senate and overrepresented in the house. The committee which reported the article were governed in some measure, in placing the overrepresentation in the house instead of in the senate, by the difficulty of dividing the senatorial districts so as not to interfere with the representative districts. An article which had already passed provided that no representative district should be divided in the formation of a senatorial district, and in the case of Waukesha it would be very difficult to make an equitable division of the county into two senatorial districts without dividing some of the representative districts.

Mr. Castleman would state some reasons why the amendment of his colleague should prevail. He had no doubt but the committee with whom the article originated had very arduous duties imposed upon them, and it would not be strange if they had overlooked some circumstances which ought to weigh in favor of the proposition. He had conversed with many members on the subject, and so far as he had done so, they generally agreed that Waukesha was entitled to what she now asked for. But to those with whom he had not conversed privately he wished to state the facts in the case. Waukesha County had nearly 16,000 inhabitants—he would call it that in round numbers. The ratio of representation in the senate was about 11,000. Consequently, with one senator they would have a fraction unrepresented in the senate of about 5,000. With five members of the house they would be overrepresented in that body about 600. Deduct this from the 5,000 and it would have 4,400 unrepresented in either house—nearly enough to entitle them to two members of the house. Nearly all the counties which had fractions unrepresented in the senate were compensated by additional members of the house. This he thought was providing an undue preponderance in one branch of the legislature. The amendment did not propose to take a senator from any other county, but only to add one member to the senate. If this were done, the county would then be overrepresented about 1,500. The question was

simply whether the county should be overrepresented 1,500 or unrepresented 4,400. The northwestern counties preferred to have their unrepresented fractions in both houses compensated by representation in the lower house, because those counties being sparsely settled rendered it necessary that each representative should attend to the interests of a large area of country, and it was therefore an object with them to have their representation consist of the greatest number practicable, and under the circumstances he was not disposed to object to the policy, but in the more compact and densely settled counties, as in the case of Waukesha, there could be no objections to making up in the senate the fractions unrepresented in the house.

Mr. Judd here made some remarks.

Mr. King remarked that the question before the convention was one of figures, and of course a dry one; but if gentlemen would listen one moment, he would endeavor to place the question in its true light. It was impossible, with the contemplated size of the two houses, to apportion to Waukesha two senators and five representatives. The alternative was between giving to Waukesha one senator and five representatives, or two senators and four representatives. Mr. King then proceeded to show by figures the different results and bearings of the two alternatives.

Mr. Chase believed the adoption of the amendment would only open the door for further alterations. The population of Washington County was only about three hundred below that of Waukesha. If this alteration were made to accommodate Waukesha, the same alteration would have to be made to accommodate Washington County. This would so far reduce the senatorial ratio, that Walworth would have as strong a claim for another senator as Waukesha had then, and so on—every member added to the senate would reduce the ratio of representation and originate a new claim in some quarter for an additional senator. They must stop somewhere and, stop where they might, some county would be left with the largest unrepresented fraction. The hardship must fall somewhere. By the apportionment made by the committee it had fallen upon Waukesha, and he thought they should consent to bear it. The county would be well represented in numbers, and he had no doubt it would be ably represented and suffer no serious inconvenience from the loss of its unrepresented fraction.

Mr. Kilbourn thought the convention should not be deterred from doing justice by any such considerations as had been urged by the gentleman from Fond du Lac. If the apportionment was unjust, they should go to work and by proper amendments obviate the injustice as far as it could be done. He found that by setting off the territory into two grand divisions, one of them, containing a population of 115,000, would have but nine senators, while the other, with a population of only 97,000, would have ten senators. He could not see by what rule gentlemen could reconcile such an apportionment with the principles of justice. After apportioning the representation as nearly equally as possible among the smaller divisions of the state, he thought they should endeavor to equalize the representation still further by taking larger divisions of country and consolidating their fractions. If the two great divisions of the state to which he had alluded were to be equally represented in the senate, he would not complain; but he could not consent that a population of 97,000 should have a majority in the senate over a population of 115,000. The larger division of the country had an overrepresentation of six in the house. This would give them a majority of the aggregate overrepresentation, and he would not complain if the rights of the people were not compromised in the senate. The proposition of the gentleman from Waukesha (Mr. Case) would not equalize the representation in the senate of the two great divisions to which he had alluded, for this would require the addition of two or three members; but it would make it so nearly equal in the senate that, considering the overrepresentation in the house, he would be satisfied.

Mr. Castleman here gave some arithmetical calculations in reply to the remarks of Mr. Judd and Mr. Chase.

Mr. Chase said the gentlemen from Milwaukee and Waukesha had both misunderstood his remarks. He did not mean that any needless injustice was done to Waukesha, but that if Waukesha were taken from the extreme wing of unrepresented fractions and placed in the opposite position, some other county must be left in the same position which Waukesha before occupied. The difficulty was inseparable from a definite ratio of representation and the varying population of the counties. They might remove by amendment the hardship from one county, but it would then rest upon some other. Remove it from that and it would rest upon some

other; and so they might follow up the inequality with amendments interminably without the possibility of destroying it.

Mr. Gifford had conversed with the committee on the subject before the article was reported, and endeavored to secure the apportionment of two senators and four representatives to Waukesha; but finding the majority of the committee inflexible upon that point, he favored the present arrangement. Still he preferred two senators and four representatives, and as the proposition had been offered by his colleague he would vote for it.

Mr. Whiton here addressed the committee. Mr. Kilbourn replied—chiefly by arithmetical calculations. Mr. Lovell defended the report of the committee by a series of calculations.

The question was then taken on the amendment, and was decided in the negative. There were 20 in the affirmative and 26 in the negative.

Mr. Featherstonhaugh moved so to amend as to give to Calumet and Manitowoc one representative each. Mr. Featherstonhaugh remarked that the report of the committee put those two counties together and gave them one representative, and he asked that they might be separated and each have a representative, because the two counties were entirely disconnected so far as their settlements were concerned, and could not possibly act in concert. The peculiar circumstances of these counties had been appreciated by the legislature which fixed the representation in the last convention, and also by the last legislature in apportioning the delegates to the present convention, and they had been kept separate, and a sense of duty to his constituents induced him to urge upon the convention the necessity of adhering to these precedents in apportioning the legislature of the state.

Mr. Chase said he would vote for the amendment for the reasons stated by the honorable mover. To his personal knowledge the two counties, so far as facilities for acting together were concerned, were as entirely disconnected as Calumet and Racine. They were contiguous, it was true, but the settled portions of the two counties were separated by a wide strip of timbered country which cut off their intercourse and separated their interests.

Mr. Judd made some remarks.

Mr. Reed hoped the amendment would prevail. He could assure the committee from his personal knowledge that there was the most urgent necessity for it. The reasons urged in its favor by the

gentleman from Calumet and Fond du Lac were good and sufficient reasons, and he was in favor of the amendment, not only for these but for other reasons. He believed that every organized county should have one representative in the house. If two counties were put together in one representative district, the representatives must be taken from one of those counties and the other be left entirely unrepresented, for it would be impossible for a man in one county to be sufficiently familiar with the local wants and interests of another county to represent it properly. In the last legislature the county of Winnebago was represented by members from other portions of the district, and during the session the county seat of Winnebago was located, and he presumed not six men in the county knew anything about it till it was done. He did not say that it was improperly located, but he alluded to the circumstance to show that counties might suffer great injustice if represented by those who knew nothing of their particular wants or interests. The circumstances of the two counties in question were such that the same man could not represent them both. One was located on Lake Winnebago and the other on Lake Michigan, and separate and probably conflicting interests might arise. He was gratified to notice the liberal spirit which had been manifested by gentlemen who had expressed their views upon the amendment, and he could not but hope it would prevail.

Mr. Cole of Grant was willing to pursue a liberal policy to the northern counties, so far as was consistent with justice to other portions of the territory. He could not see why one man could not represent the two counties in question. They were contiguous to each other and he perceived by the map that the extremes were only thirty-five or forty miles apart. The gentleman from Winnebago thought they should give to each organized county one representative. He thought if the rule should be applied to all the northwestern counties, the gentleman would hardly be willing to adhere to his own principle. Suppose they should give to Crawford, Chippewa, St. Croix, and La Pointe four representatives; it must work great injustice to other portions of the territory, or the legislature must be increased to an unreasonable size.

The committee rose and reported progress and asked leave to sit again thereon. Leave was granted.

On motion of Mr. Vanderpoel the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

The convention then resolved itself into committee of the whole for the further consideration of No. 18, article on apportionment of representatives, Mr. Wheeler in the chair.

Mr. Kilbourn withdrew the amendment offered by him in the forenoon.

Mr. Featherstonhaugh said he wished to get a vote as soon as possible on the amendment he had offered, to ascertain whether the convention were disposed to adhere rigidly to the apportionment as recommended by the committee, or whether they would allow of amendment. He thought the counties of Calumet and Manitowoc at any rate should be allowed each a representative. He could not accede to the doctrine in general that population only should be represented. It was too unstable a basis in a new country where the people were constantly changing—in a large tract which was fast filling up. But if population was to be strictly regarded, how did it happen that Portage was assigned one member of the assembly, and Calumet and Manitowoc together but one? Those two counties together had a far larger population than Portage, and if they were not strictly entitled to two representatives, they were reduced to the alternative of asking a little more than what they were entitled to, or receiving far less. But the great reason for not joining the two counties together and giving them but one member was that they were separated by nature and had no interest in common. Gentlemen had spoken of the barrier between them as a dense forest. It was more than that. It was a swamp through which there was no road, and which was wholly impassable to any but Indians. No white man had ever gone through. Under such circumstances it was unjust to join the counties together for election purposes on any pretense. He repeated that the system was wrong which made it necessary to do this. It was impossible, on the basis of population, to do justice to the small counties by giving them one-half or one-fourth of a member. The true way was to give to a certain amount of territory defined by boundary lines, or separated by nature and having a distinct interest, a representative at any rate. This reason applied with peculiar force in the case of Calumet and Manitowoc, and he hoped the liberality of the convention would accord a representative to each.

The amendment was adopted, 29 to 9.

Mr. Fenton offered an amendment giving the counties of Crawford and Chippewa one member of the assembly, and St. Croix and La Pointe one. He remarked that the argument of the gentleman from Calumet would apply with equal if not greater force to this case, and he hoped the convention would be as liberal to him as to that gentleman.

Mr. Dunn said he had voted for the amendment of the gentleman from Calumet from a conviction that each organized county should have at least one member of the legislature. If it had been judged wise and proper by the legislature that a county should be organized for the purposes of government, the inference was equally strong that it had such a separate and peculiar interest as entitled it to a representative. There were many questions which related to each county in its corporate capacity, which could be properly attended to only by a representative of that county and by one who had no divided interest. He agreed with the gentleman from Calumet that population should not be wholly the basis of representation. There were various reasons besides numbers which should influence in apportioning members. Putting together two or more counties to be represented by one member was itself an evil and should be avoided. Local jealousies might prevail, or local interests might be in conflict, and as the representative must come from one or the other he very naturally would be attached to the interests of his own county, and the other would feel that it was not represented. Counties should be represented, and they cannot be unless each has a representative of its own. As to the amendment of the gentleman from Crawford, he remarked that the county of St. Croix was duly organized and should have a representative. The county of La Pointe had no separate organization, but was attached to St. Croix, which was an additional reason for giving St. Croix a member. The same remark would apply to Chippewa and Crawford. Crawford was an old county and had been burdened with an attached county for years. He thought there was not a county in the territory better entitled to a representative of its own. The principle decided in the amendment of the gentleman from Calumet applied with double force to this case. It was only proposed to add one to the gross number of representatives, and he thought this amendment, while it did justice to the northwestern counties, would do no injustice to the others.

Mr. Brownell said that if the principle of apportionment adopted by the committee were departed from in any case, it certainly should be in this. Crawford and St. Croix were distant from each other and had no interest in common, and a member from one of them would not be likely to be a true exponent of the wishes and feelings of the other. Moreover, frontier counties needed a larger representation to secure their rights. They are in process of formation and need more special legislation than older counties; and besides, being farther away, they are more apt to be neglected. The fact that St. Croix and La Pointe were unrepresented in any civil office, and that no census had ever been taken there, was good evidence of this. The population of St. Croix, he said, was not known. It was much larger than it was reported and was increasing very fast. This was a reason for giving them a larger representation than the committee had assigned them. He hoped the convention would exercise the same liberality towards these counties as they had towards Calumet and Manitowoc.

The amendment was adopted.

The committee then rose and by their chairman reported the same back to the convention with amendments.

The question being on concurring in the amendments of the committee, Mr. Whiton called for a division of the question.

The question having been put upon concurring in the first amendment of the committee, which was to strike out the twenty-sixth and twenty-seventh lines and insert the following: "The county of Calumet shall be entitled to elect one member of assembly. The county of Manitowoc shall be entitled to elect one member of assembly," it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 52, negative 8; for the vote see Appendix I, roll call 128].

The question was then put upon concurring in the second amendment of the committee, which was to strike out the twenty-ninth and thirtieth lines and insert the following: "The counties of Crawford and Chippewa shall be entitled to elect one member of assembly. The counties of St. Croix and La Pointe shall be entitled to elect one member of assembly," and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 52, negative 8; for the vote see Appendix I, roll call 129].

Mr. Castleman moved to amend the article by striking out in the twenty-fourth line the words "one senator" and inserting the words "two senators"; also, by striking out in the fiftieth line the word "five" and inserting the word "four."

He remarked that the object of the amendment was to increase the representation of Waukesha by giving her another senator and taking one from the number of representatives assigned to her. The fraction in Waukesha which was unrepresented was large at first, but by the addition of two members to the gross number it had been increased to over a thousand. The injustice of this was too great to be tolerated. The member of the assembly which they gave up could be assigned to some other county that required him.

Mr. Whiton spoke.

The question was then put on the adoption of the same, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 39, negative 24; for the vote see Appendix I, roll call 130].

Mr. Turner moved to amend the article by striking out in the twenty-third line the word "one" and inserting the word "two"; also, by striking out in the forty-ninth line the word "five" and inserting the word "four." And the question having been put upon the adoption of the same, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 47, negative 17; for the vote see Appendix I, roll call 131].

Mr. McClellan moved to amend the article by striking out in the forty-fourth line the word "five" and inserting the word "six."

Mr. Chase hoped it would not pass; he thought we had gone too far already. He had hoped there would be no alteration except to give an increase to the sparsely settled counties, but he had foreseen the result if the apportionment were once broken in upon. He saw now no termination to the amendments. Every new one made the apportionment in regard to the other counties more and more unequal. If we passed this amendment, we must alter the apportionment in regard to all the other countries, and the result would be that the bill would have to be sent back to the committee and remodeled throughout. He thought we had better stop short.

Mr. Judd spoke.

Mr. Kinne said he did not desire that the report of the committee should be broken in upon. He had examined it carefully and he believed it was the fairest that could be proposed. A great deal had been said about inequality, but it was impossible to make the apportionment exactly equal unless a way could be found out of dividing three by two without a remainder. But as the report of the committee had been amended, giving an increase to Waukesha

and Washington and to the northwest counties, the inequality upon Walworth County had become too great to be borne. It was getting into difficulty, he was aware, to go further, but it was worse to stop here. The inequality was now greater in regard to Walworth and Racine than it was at first in regard to Waukesha. Since they had begun to innovate, it was now necessary to go on, or to go back to where we had started from.

The question was then put and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 38, negative 24; for the vote see Appendix I, roll call 132].

Mr. Kinne moved to amend the article by striking out in the twenty-second line the word "one" and inserting the word "two"; also by striking out in the forty-eighth line the word "five" and inserting the word "four."

Mr. King was opposed to it. All the members allowed by the constitution had been apportioned already, and it was impossible to increase the number any further. Some explanation ensued, when

Mr. Estabrook called for a division of the question. The question was then put first on striking out "one" and inserting "two," and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 42, negative 20; for the vote see Appendix I, roll call 133].

Mr. Kinne then asked leave to withdraw the second division of the amendment.

Mr. Chase rose to a point of order. He wished to know if it was in order when a whole proposition had been submitted, which was afterwards divided, and the first part adopted in faith that the latter part would be, for the mover to withdraw the second part. The President thought it was in order. Mr. Kilbourn said it appeared to him that this was trifling. An amendment had been adopted in direct opposition to the provision of an article which we had already placed in the constitution and which was binding upon us till it was rescinded, in the same way as it would be upon the legislature hereafter. We had increased the number of senators to twenty-two, when the constitution prescribed that it should not exceed twenty-one. He thought that this addition to the constitution, being repugnant, was void. It was undignified and unmannerly, too. If the convention wanted to increase the number of the senate,

the direct and proper way would be first to change the article in the constitution so as to admit of it. Mr. Judd spoke.

Leave to withdraw was granted.

Mr. Larrabee moved to amend the article by striking out in the thirty-second line the word "five" and inserting the word "four"; also by striking out in the ninth line the word "one" and inserting "two." And a division of the question having been called for, the question was first put upon striking out "one" and inserting "two," and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 36, negative 27; for the vote see Appendix I, roll call 134].

Mr. Jackson moved that the article be recommitted to the committee with instruction to amend the same so that the number of representatives would not be more than 66 in the assembly nor more than 22 in the senate.

Mr. Sanders moved to amend the motion by instructing the committee to report the article as reported by the committee of the whole, which was accepted by Mr. Jackson as a modification of his motion. And the question having been put upon the motion to recommit, it was decided in the affirmative. And a division having been called for, there were 31 in the affirmative and 29 in the negative.

The convention then resolved itself into committee of the whole for the consideration of No. 7, article on the judiciary, Mr. King in the chair.

The article was read.

Mr. Kilbourn offered an amendment to the second section, to the effect that when county courts were created the jurisdiction of probate matters should be given up to them.

Mr. Kilbourn said he presumed the reason which had induced the judiciary committee to provide for the election of probate judges and not to establish a system of county courts, was that the latter would be expensive and burdensome upon the sparsely settled counties. The object of his amendment was to give the legislature power, when desired by any county, to erect county courts and give up the probate jurisdiction to them. There were some counties where this would be very convenient now. The county courts would do all minor business more expeditiously and with less expense than the circuit courts; and to make them also courts of probate would give a character and dignity to that branch which probate courts had not possessed before. It was a well known fact that probate courts had not received the attention heretofore which their importance demanded, and that probate judges had not always been the proper men for their station. The whole property of

the country had to pass through the probate courts at least as often as once in every generation, and it was important that they should be placed on a respectable footing.

Mr. Dunn said the amendment of the gentleman from Milwaukee had been suggested to him some days since, but he had not had an opportunity of consulting with the mover or with the gentlemen of the judiciary committee in regard to it. The article now provided that the legislature might create such inferior courts as they should deem necessary, and of course this gave them power to erect county courts. The amendment proposed to give the probate business up to the county courts, when established. It was true, he said, that the business of the probate was very extensive and important, and that it involved the most intricate questions in the law, and that it was therefore necessary that the office of probate judge should be well filled. It might be the intention of the gentleman from Milwaukee, by the creation of county courts invested with probate jurisdiction, to put probate business in better hands, but he could not see that that object would be attained in the way proposed. The judges of the county courts would be elected by the people, as well as the probate judges; and he could see no reason to suppose that better men would be elected to the former than to the latter. The county courts, however, would transact other business, and he agreed that, as this was to be so, it would be wise and prudent and economical to give up the probate business to them. He saw no objection to the amendment, and if it should meet the views of the rest of the committee he would not oppose it.

Mr. Whiton suggested an amendment to give the legislature power in their discretion to invest the inferior courts with probate jurisdiction. Mr. Kilbourn said he was not particular as to this. He only desired that the substance of his amendment might be preserved. The article as reported authorized the creation of inferior courts. His amendment provided that when such courts should be created, they should be invested with exclusive probate jurisdiction. If such an amendment were not adopted, as the probate courts were provided for in the constitution, the legislature could give inferior courts only concurrent, not exclusive, jurisdiction of probate business. The county courts should have exclusive jurisdiction, and then the probate courts might be abolished. His main object was to elevate the character of the probate courts and to have the busi-

ness done openly before the public. He accepted the amendment of the gentleman from Rock. Mr. Martin thought the amendment did not accomplish the intention of the mover. It would give only appellate jurisdiction to the county courts, which otherwise would belong to the circuit court. To accomplish the intention of the mover it should abolish the office of probate judge altogether. Mr. Whiton concurred. Mr. Kilbourn said he had prepared an amendment to another section, which he thought would obviate the difficulty mentioned by the gentleman from Brown.

Mr. Doran remarked that the only reason which had been urged against the establishment of county courts was that it would cause increased expense. But if the probate business were given up to them, the whole expense of the court would be little, if any, greater than that of the probate court alone. Thus the probate business would be better done, and all minor civil and criminal business very much facilitated. Competent men enough could be found to fill the office of judge in these courts. As to the salary, that might be left to the county commissioners, to be regulated by the amount of business to be done, and a tax might be imposed upon the business in such a way as to pay the whole or nearly the whole of the expense.

Mr. Martin offered an amendment to section 14, giving the legislature power to confer probate jurisdiction upon county courts in their discretion. Mr. Kilbourn said it was the same in substance as his. Mr. Martin withdrew it.

Mr. Estabrook preferred the suggestion of the gentleman from Milwaukee (Mr. Doran). He would like to see the idea in the second section enlarged upon. He would like to see the jurisdiction of the county courts enlarged and the probate jurisdiction given up to them. It had been suggested that this would not operate well in the sparsely settled counties. He did not think so, but if gentlemen who represented those counties thought so, let them say it. For his part, he preferred to have the probate court abolished as a separate court and the duties attached to county courts. Mr. Doran said the objection to the amendment proposed by his colleague was that it required the legislature to confer the probate business upon the municipal courts. Now if more than one court of the kind were erected in a county, there was no way of determining which should have the probate jurisdiction; in fact, both must have it, and this must create confusion.

Mr. Kilbourn's amendment was not adopted. Mr. Martin offered the amendment he had before proposed.

Mr. Doran said he had received many letters on this subject since he had been here, and they expressed a general desire for the erection of county courts with criminal and probate jurisdiction. He thought it the duty of the convention to provide for them absolutely—not leave it discretionary with the legislature to do it or not. Otherwise it might not be done; the legislature might say the constitution had established all the courts which were necessary. He would submit a proposition giving jurisdiction to the county court in cases where less than $2,000 was involved, and in criminal and probate cases. This would make the county court respectable and permanent; and the probate business would be done openly. He merely suggested it now.

Mr. Martin's amendment was not adopted.

Mr. Doran offered an amendment to section 2, to strike out in the second line the words "probate courts" and insert "county courts with probate jurisdiction." Mr. Whiton opposed it. Mr. Dunn said the amendment of the gentleman from Milwaukee (Mr. Doran) struck at the very object which the judiciary committee had proposed to themselves. They had desired to establish a system which should be cheap, simple, and adequate to the present wants of the people, leaving it to future legislatures to make such further additions as the increase of business and the density of population might make expedient. They had done so. They had thought that county courts were not needed now, and so had merely provided for creating them hereafter. Gentlemen of experience, acquainted with the wants of the territory, could see no necessity for establishing county courts now. They must see, he thought, that the system proposed was adequate to all present wants.

Mr. Chase remarked that it had been said that government was a necessary evil. He believed it, and he thought it applied with especial force to the judiciary. He therefore hoped that, to make the evil as light as possible, cheapness and facility of doing business would be chiefly regarded. If the amendment was calculated to increase officers or the expense or difficulty of obtaining justice, he would be opposed to it. He understood that it would have this effect, and he could not favor it. He thought that the less law the better.

Mr. Doran said that the expense of county courts had been dwelt upon largely, but nothing had been said about the expense of probate courts. The expense of the latter alone would be nearly or quite as great as of the county courts with probate jurisdiction; and a tax could be imposed from suitors in it which would be sufficient to pay the expense and which it would still be for the interest of the suitors to pay. Why drive suitors in every small matter to the circuit court, with its interminable delays and proportionate fees, when justice might be done them, as it were, at their own doors by the county courts? He would say, as he had said before, that the expense could be no objection to this proposition. If gentlemen had any valid reasons for opposing it, they had not yet brought them forward.

Mr. Estabrook said that it must be evident that this plan would not cause any additional expense, but that it would be every way convenient. It was well known that the judge of probate was now required to hold a court at the county seat at least once a month, and that there must be one in each county, no matter how small. The plan proposed would do all this away. Among the conveniences of it which would strike every practitioner was this, that the granting of all remedial writs, the allowing of orders, certificates, etc., would be done by the county court, which would always be convenient and accessible; whereas the circuit judge might be far away when most wanted.

Mr. Judd spoke, alleging that the system would be very expensive. Mr. Estabrook inquired what those expenses were to be. Were they not the necessary expenses of the litigating parties? And if not paid here, would they not be paid in some other court? And would they not be as small, and smaller, in this court than in any other? He thought the gentleman had been led astray by the fact that the expenses of the courts had been paid heretofore by the United States, but they must now under any system be paid by the people.

Mr. Doran said he admitted he had not had as much experience in courts as the gentleman from Dodge, but yet he had had some. He would inform him that in the city of Milwaukee there was a municipal court somewhat of the kind proposed, which actually paid a revenue to the city above all its expenses. Perhaps such courts would not do so in all the counties, but he thought it safe to say

that in at least one-half the counties the income would more than pay the expenses. The gentleman omitted any mention of the expense of the organization of circuit courts. It was necessary to keep a large number of jurors in waiting in them as in county courts. The objection on the ground of expense, then, had no weight. There would be an actual saving, as had been sufficiently shown.

Mr. Dunn remarked that the argument of the gentleman from Dodge, drawn from the increased expense, had some weight. Gentlemen seemed not to have noted that the judge of probate received his compensation from fees, not from the county or state treasury. It was no expense to the people at large. If a separate county court were to be organized, on what plan should it be? Should the judge be a salaried officer? He should. Such had always been the case, and there was propriety in it. This, then, would be an additional expense to the people.

The committee in devising the plan they had submitted had had a distinguished example before them in the Constitution of the United States. The framers of that instrument had organized only such courts as were absolutely necessary, and left the door open for Congress to establish others when the wants of the country required. There was also good reason for this course, for they could not know in advance what wants might arise; nor could we. It was policy, then, to do as they had done, not to fix courts at random for all time to come.

Mr. Kilbourn said he could not entirely agree with the gentleman from Dodge or the gentleman from Lafayette. The gentleman from Lafayette said it was a new proposition to allow a court to support itself by its fees. He had supposed it might be proper for a county court to tax suits to pay its expenses, as those expenses would be in proportion to the amount of business. At any rate fees were now so charged for probate business. But the bill itself indicated a way to pay these salaries, if they must have salaries. The only imperfection in it was that it required the money to be paid into the treasury of the state instead of into that of the county. This fund would be a very proper one for the support of county courts. In Milwaukee, as had been said, the municipal court was a source of revenue. The gentleman from Dodge had greatly overestimated the expense of county courts. There were not expensive courts. Business was done in them far more cheaply and

quickly than in circuit courts. But if the committee had reported differently in another respect, the provision for county courts would not have been as essential as now. They had given power to erect inferior courts, but had given no power to abolish the probate courts. It was probable, for this reason, that the legislature would not erect any county courts. As the bill now stood they would be superfluous, for the probate courts would be in existence still. In the other way they might have been a source of revenue. His amendment, which had been rejected—improperly, he thought—provided for this.

Mr. Richardson said he would not attempt to argue the question, but he thought the gentleman from Milwaukee was mistaken as to the power of establishing county courts. The power was given to the legislature as the bill now stood to erect county courts; and counties could have them that wished; and those that did not desire them were not obliged to be burdened with them. If the amendment of the gentleman from Brown had been adopted, there would not have been two courts at once with the same jurisdiction. That amendment could be adopted in convention and obviate all difficulty.

Mr. Chase hoped the gentleman from Milwaukee would consider that we were forming a constitution for the whole territory—not for Milwaukee only. Milwaukee might need a county court and find it a source of revenue, but Fond du Lac would not, nor did he think any other county would. He hoped we should not provide courts for the whole territory not wanted now.

Mr. Lovell said that when the amendment of the gentleman from Milwaukee (Mr. Kilbourn) was before the convention he had hoped it would be adopted because it would do away with the necessity for that of his colleague (Mr. Doran). It was obvious that the former would have been beneficial in joining two officers and thus providing a better probate judge as well as county courts. The objection to the proposition now under consideration was that it provided for both county and probate judges. The judicial force as provided in the article at first was useful and would be for a number of years for all the counties except Milwaukee. The provision for municipal courts was ample for all the wants of Milwaukee. He was opposed to organizing by the constitution courts which were not wanted. It was the organization of courts, not the amount of business done, that was expensive. He had heard of a man that had two cats, a large and a small one, who cut two holes through his door, a large

and a small one, to let them out and in. This proposition of two courts for the same purpose was as absurd.— He was opposed to making courts for the purpose of making officers. Give judges as much as they could do—work them hard, and pay them well—and the business would be better done than if divided among many. The office of judge was one of service and required practice. If inferior courts were erected, they would have inferior judges, small salaries, and little business to do, and that little would be ill done. He was opposed to their creation.

Mr. Doran said he could not help expressing his surprise that gentlemen would still object to this amendment on the ground of expense after it had been proved to a demonstration that no additional expense need be incurred; but that on the contrary, everything considered, there would be an evident saving of expense. No less extraordinary was the proposition that new officers were to be created, when no such thing was contemplated. It was understood and conceded on all hands that we were to have probate judges and we already have clerks of county commissioners. Now where will be the necessity for creating new officers if you give this probate judge a limited jurisdiction in civil cases and have the clerk of the board of county commissioners act as clerk of that court? By changing the name of the court you do not establish a new officer. You will have but one judge and one clerk; you have the same now. If there will be no business, there will be no expense. If there should be business, let the suitors pay all the expense and a further tax if you will, to go into the county treasury, and this will be only carrying out the principle now about to be recognized by the article, which provides that suitors in the district court shall be taxed in each case, such tax to be applied towards paying the salary of the judge. This will be much preferable to having parties wait for the district courts, wherein it generally takes eighteen months to bring a suit to maturity; and then if taken to the supreme court, to wait another year for a final hearing. The honorable gentleman from Lafayette (Judge Dunn) says that if any change should be made it ought to be left to the legislature, and in support of this refers to the Constitution of the United States and shows the provision—the wise provision—therein for a Supreme Court and such inferior courts as the Congress might ordain. But the gentleman seemed to overlook the fact that this judge of probate would for all time be

an obstacle in the way of the establishment of county courts. The multiplicity of courts would be an objection and under this article, if adopted as it stands, the judge of probate should remain as long as the constitution would last. But he (Mr. Doran) considered the gentleman unhappy in his reference to that part of the Constitution of the United States which of all others has been the subject of the greatest diversity of opinion among the ablest men of the Union and at one time threatened its dismemberment. When during the administration of the elder Adams a judiciary bill was matured providing for a separate Supreme Court, and in 1801 became a law, the ruthless hand of party faction the following year on the accession of Mr. Jefferson to the presidency demolished this truthful fabric of a judicial system; and then arose the question whether Congress had the power to legislate out of office the judges who had been created the year previous and on which the Senate was divided as equally as could be, the casting vote of the vice-president deciding in the affirmative. In the constitution he considered everything ought to be made so clear as to be beyond doubt, hence one reason for his desire that county courts should be established with probate jurisdiction. He (Mr. Doran) referred to many instances that had occurred in Michigan under the system of doing probate business as now established in this territory from which it was manifest that reform was necessary, and that there was no way to effect this but by giving the probate judge jurisdiction in civil cases and having the probate business done in open court before the public and the bar.

The question was then taken on the amendment and it was lost.

The committee then rose and by their chairman reported that they had made some progress therein and asked leave to sit again. Leave was granted.

On motion of Mr. Vanderpoel the convention adjourned.

WEDNESDAY, JANUARY 19, 1848

Prayer by the Rev. Mr. Penman.

The journal of yesterday was read and corrected.

Petitions on the subject of homestead exemption were presented and referred to the committee of the whole, as follows: by Mr. Ward, from inhabitants of Iowa County; by Mr. Beall, from inhabitants of Marquette and Rock counties.

Mr. Castleman presented a remonstrance from the inhabitants of Marquette County on the same subject, which was referred to the same committee.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 17, article on education and school funds.

Mr. Lovell, from the committee on executive, legislative, and administrative provisions, made the following report, to wit:

"The committee to whom was referred the apportionment of representatives with instructions to strike out the words 'The counties of Calumet and Manitowoc shall be entitled to elect one member of assembly' and insert 'The county of Calumet shall be entitled [to elect] one member of assembly. The county of Manitowoc shall be entitled to elect one member of assembly'; also, to strike out 'The counties of Crawford, Chippewa, St. Croix, and La Pointe shall be entitled to elect one member of assembly' and insert 'The counties of Crawford and Chippewa shall be entitled to elect one member of assembly. The counties of St. Croix and La Pointe shall be entitled to elect one member of assembly,' respectfully report the same back to the convention with the amendments which they were instructed to make.

F. S. LOVELL, Chairman"

Resolution No. 1, introduced by Mr. Reed yesterday, was then taken up. Mr. Chase moved that the same be referred to the committee of the whole and ordered printed.

Mr. Reed said that the main principle involved in the resolutions—that of preëmption—was one generally adopted by the Democratic party and by all parties. It had been recommended to be carried out to its fullest extent by the President in his recent message. It was a principle which no gentleman of either party on that floor would controvert. By the act of donation the minimum price on these reserved lands had been fixed at $2.50 per acre, with no provision for preëmption. In the counties of Marquette and Winnebago a large portion of the public land was thus thrown out of market. This was hostile to the interests of the territory and operated very injuriously on those who had gone to settle in those counties, whose interests required that these lands should be open to preëmption and that their minimum value should be fixed at $1.25 per acre. The lands thus reserved were no more valuable

than any other lands. They were all agricultural in their character. The operation of the present system was to keep these lands out of the market and throw upon the actual settlers on the other lands in the counties the entire expense of the government. Mr. Reed said that he felt in view of these circumstances that it was due to those who were thus situated and to those who might come afterwards into those counties that some action should be had on the subject. The object in bringing the matter before the convention was to lay it before Congress at as early a period as was practicable. It was not supposed that the action of the convention could secure the rights which were desired; it was merely an ordinary measure to obtain the action of Congress. He had not supposed the subject was one that was new to any members on that floor, nor did he deem that it was necessary to refer the resolutions to the committee of the whole.

Mr. Chase said he was sorry that the gentleman from Winnebago had conceived it to be necessary to debate the question on its merits, on a motion to refer it to the committee of the whole. He was as well satisfied as the gentleman himself could be with the general principles of the resolutions. In order to perfect them, however, he thought that one or two amendments would be necessary, and it was with a view to making such amendments that he had moved their reference to the committee.

The question was taken on the motion and was decided in the affirmative. Resolution No. 2, introduced by Mr. Lakin yesterday, was then taken up.

Mr. Chase was opposed to the passage of the resolution. When the members had finished the business on which they were engaged, it would be time enough to adjourn. The last convention had occupied two weeks of their time in the early part of the session in discussing motions and resolutions fixing the time of adjournment.

Mr. Lakin did not wish to take up the time of the convention in discussing this point. He thought every member must see the advantage of limiting the adjournment to some particular time. Gentlemen could now see their way through their business. They had already been in session as long as their constituents thought they ought to be. He was among those who wished to close up the business of the convention and thought they could easily do so in a week from this time.

Mr. Judd moved to lay the same upon the table. And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 36, negative 26; for the vote see Appendix I, roll call 135].

Resolution No. 3, introduced by Mr. Carter yesterday, was then taken up. Mr. Case moved that the same be referred to the committee on incidental expenses, which was disagreed to. Mr. Case moved that the resolution be referred to a select committee of five, which was agreed to.

Resolution No. 4, introduced by Mr. Foot yesterday, was then taken up. And the question having been put on the adoption of the same, it was decided in the affirmative.

Resolution No. 5, introduced by Mr. Chase yesterday, was then taken up. And the question having been put on the adoption of the same, it was decided in the affirmative.

Resolution No. 6, introduced by Mr. Lewis yesterday, was taken up. And the question having been put on the adoption of the same, it was decided in the negative. And a division having been called for, there were 17 in the affirmative and 25 in the negative.

Resolution No. 7, introduced by Mr. Sanders [yesterday,] was then taken up, when Mr. Gifford moved that the same be laid upon the table, which was agreed to.

No. 17, article on education and school funds, was taken up. Mr. Lovell asked and obtained the unanimous consent of the convention to amend the article by striking out the word "county" wherever it occurs before the word "academies." The question was then put on the passage of the article, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 52, negative 12; for the vote see Appendix I, roll call 136].

No. 18, article on apportionment of representatives, was then taken up. And the question having been put on concurring in the report of the committee, it was decided in the affirmative.

Mr. Case moved that the article be recommitted to the committee with instructions to amend the twenty-fourth line by striking out the words "one senator" and inserting the words "two senators"; also, by striking out in the fiftieth line the word "five" and inserting "four." The President decided said motion to be out of order. Mr. Kilbourn took an appeal from the decision of the Chair.

The President said that the amendment was identical with one which had been offered yesterday and which had been virtually rejected by the convention. Mr. Case said that if the decision of the Chair was sustained, the friends of the amendment would have no remedy except to recommit the article. He therefore moved to recommit, with instructions to insert the amendment. Mr. Lovell thought that it could not be in order to recommit the article with instructions to the committee to do what the convention had already

by a vote refused to do. Mr. Chase called for a division of the question—first as to recommitment, and next as to instructions. Mr. Judd made some remarks. The President said that the motion to divide the question was not in order.

Mr. Kilbourn spoke in reply to Mr. Judd. He was glad that the gentleman from Dodge had admitted that injustice had been done in the apportionment to the county of Waukesha. That gentleman had admitted that the county was entitled (to use his own language) to nine units of representation. Yet by his computation it would have only eight: five representatives and three senators. It was entitled to one more. The question was whether this additional representative, very slightly overrepresenting the county, should be allowed to it, or a large fraction should go unrepresented. The county of Waukesha stood in a kind of transition state in reference to the two counties of Racine and Walworth. It had a larger population than Walworth, but the same representation. It had two units less than Racine. Why should not that county, occupying a middle ground between the two others in reference to population, occupy a similar position in respect to representation? He did not contend for more for that county than he would for any other. He had no particular interests at stake in it.

Mr. Estabrook took up the question in a humorous light and said he would not be prepared to vote for the motion until he had had an opportunity of seeing other members and logrolling with them a little on the subject. Mr. Chase said he was not willing to logroll with gentlemen. He was in favor of the principle that every tub should stand on its own bottom. Mr. Castleman, as one of the delegates from Waukesha County, would say that he would join with no member in logrolling. He asked the apportionment of an additional senator to his county, as a matter of right and justice. The simple rule by which to arrive at the facts of the case was to divide 210,000, the population of the territory, by 76, the number of representatives. That gives 3,181 as the ratio of representation. And five members on that basis would assume the population of the county of Waukesha to be 15,900, which was within 34 of its actual population. That county was precisely represented in the house. In the senate the ratio of representation was 11,800. If any gentleman could show that by the present apportionment Waukesha would not be short in her representation in the senate to the amount of

full 5,000, it must be by some arithmetic which he did not understand. There was no way of getting round the fact.

Mr. Judd spoke.

The President stated that on further reflection he was of the opinion that the motion to recommit with instructions was not in order. It was in order yesterday to move to amend the report of the committee, but that had not been done. The object of the gentleman from Waukesha (Mr. Case) could be reached only by a motion to reconsider. Mr. Kilbourn said the Chair had admitted that if the amendment had been offered yesterday it would have been in order. He could not see that the rights of those friendly to the amendment should be barred by the lapse of a day. The amendments were all separate propositions, and it was clearly competent for the convention to act on one of them without acting on the others. He could not see how the decision of the Chair could be maintained by any parliamentary law or the rules of the convention. Mr. Lovell supported the decision of the Chair. The convention having once rejected the proposed amendment, it was manifestly out of order at this stage of proceedings to move to insert it again. He concluded by moving a call of the convention. Mr. Chase said if it was in order to move to recommit with instructions, of course it would be so to move to recommit without them. He believed the decision of the Chair to be perfectly correct. Mr. Sanders said that the article was in exactly the same position now as when the amendment was originally offered and lost. He hoped the decision of the Chair would be sustained and believed it to be perfectly right.

Mr. Judd made some remarks.

Mr. Lovell moved a call of the convention, which was ordered, and Messrs. Colley, Crandall, O'Connor, Prentiss, Rountree, and Ward reported absent. Mr. Beall moved that all further proceedings under the call be dispensed with, which was agreed to.

Mr. Kilbourn said the question before the convention was one of considerable importance, as it was to establish a rule of practice and, if the decision of the Chair should be sustained, one entirely different from what had been their previous practice. There had been no expression of opinion on the part of the convention in reference to the amendment. It had merely fallen by recommitment. No rule should be so construed as to take away from a deliberative body the power of deciding a question on its merits.

Mr. Judd made a few remarks.

The President stated that he could not lose sight of the proceedings of the convention in reference to the amendment yesterday. The proposition to amend, as was now suggested by Mr. Case, was then adopted. The convention then made an order that the article should be recommitted with instructions to the committee to confine themselves to the amendments of the committee of the whole. If it was in order to move to recommit, it would be in order to move the same identical proposition a dozen times over. There would be no end or limitation to the difficulty which might ensue.

The question was then put: "Shall the decision of the President stand as the decision of the convention?" and it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 56, negative 9; for the vote see Appendix I, roll call 137].

Mr. Kilbourn moved to amend the article by adding a new section, as follows: "Section — In laying off single districts for election purposes no county shall be subdivided when such subdivision is opposed to the wishes of the people thereof as made known through the delegates or representatives of such county."

Mr. Kilbourn said that this single district system, so far as it went to cut up counties, was unacceptable to a large number of the people. If he acted on his conviction of what was best, he would go against the system so far as dividing counties was concerned. Several eastern counties were in favor of the plan of division, and he himself came here under instructions to that effect. Hence his vote when the subject was first before the convention. He thought the people of each county should have an opportunity of expressing their views on the subject and choosing such a plan as they themselves preferred.

Mr. Chase inquired whether it was in order to move the reference of the article to the committee of the whole. The President said it was.

Mr. Case moved that the article be recommitted to the committee of the whole. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 27, negative 40; for the vote see Appendix I, roll call 138].

Mr. Dunn hoped the amendment might prevail. He was not in his seat when the article passed. He did not think the principle of cutting up counties would work well. He had heard the argument adduced by those who were in favor of districting the counties, that it would allay sectional feelings and differences. He drew an entirely different conclusion on this point. The moment they began to draw lines and district counties, they would see sectional differences start up on every side. This system of dividing counties would open a door for gerrymandering which ought to be kept closed. It would be infinitely more satisfactory to give the people of each county the opportunity of settling this matter to suit themselves. If the system of dividing counties was persisted in, each district would of course elect its own representative; and the representatives so elected would hardly feel the same interest in the welfare of the whole county that they would in their particular districts. He could not see that the system possessed the advantages which its friends claimed for it. It would be necessary of course to form senate districts, but it was not necessary to make such a provision with reference to the house of representatives. The amendment of Mr. Kilbourn merely left the matter open to the people; and if they liked the system, he for one had nothing to say against it.

Mr. Sanders hoped the amendment would prevail. He was in favor of the single district system but not of dividing counties. There was an impracticability about the matter. He did not come to the convention instructed to go for any such project. He had received many letters from his constituents on this matter, and all of them had united in the opinion that it was not the business of the convention to district the counties but that they should throw that matter back on the legislature, where it properly belonged. In New York this matter had been left in the hands of the supervisors. The convention were not competent to do it, and it was not their business. If they undertook it, they would find themselves involved in an interminable difficulty from which they would find it impossible to extricate themselves. In the case of the county of Racine they could not divide that county into five districts without cutting up the senate districts. They would find great difficulty, too, in such counties as Sheboygan, where separate towns were not particularly set off. How could any gentleman on that floor feel competent to step in where a delegation from a county might be divided

on the subject of districting and by his vote decide the question for them?

Mr. Judd spoke in opposition to the amendment.

[Mr. Judd was most emphatically opposed to the amendment. If we declare in favor of the single district system at all, we should not make exceptions of some counties, but make it general. And why seek to evade it by cutting up some counties and not others? It would be unfair and unjust. For his part, he was not very particular whether the system was adopted or not; he had supported it and he believed a vast majority of the people were in favor of the single district system. He thought this body was better calculated to divide the state into districts than the legislature can be, as every county has a larger representation here than it will have in the legislature; that the census was fresh before them. He thought they were sent here for the purpose of establishing how the legislature shall be elected, and then carrying out the principle. He could never vote for the proposition; if it is proper that the single district system be adopted at all, let us carry it out in full.—*Tri-Weekly Express*, Jan. 20, 1848.]

Mr. Chase said that he had always found that whenever a party traveled out of the road of principle for the sake of acting in reference to expediency they always got into difficulties. The single district system was the correct one, and he hoped the amendment would not prevail. So far as mere expediency was concerned the single district system would not work well in his own county. Under the present system they could elect an entire Democratic delegation; but probably under the single district system they would send one Whig. Still he was not to be influenced to sacrifice the single district system by any such consideration. He would adhere to principle and not sacrifice it to expediency.

Mr. Beall spoke.

[Mr. Beall differed with his colleague in reference to his own county, as he believed it was sure to elect Democrats whether by single districts or otherwise. He thought it might possibly operate injuriously in some counties. But the principle would have to come sometime and it might as well come now, and it must be adopted in full or not at all. He hoped the proposition of the gentleman from Milwaukee would not prevail.—*Tri-Weekly Express*, Jan. 20, 1848.]

Mr. Castleman regretted to be obliged to differ from his particular friends on this subject. The matter resolved itself into a question of district or no district. If the whole question were left open to the counties, political parties would adopt it and throw it aside from time to time as mere party expediency should for the moment dictate. It would be made a party measure wherever it was tried. The adoption of the amendment would be virtually a defeat of the proposition which had already met with the approval of the convention.

Mr. King hoped that the convention would not now abandon by an indirect vote what they had twice determined on by a direct one. The argument of the gentleman from Lafayette (Mr. Dunn), if good at all, was as good against the whole system of single districts. He did not believe that any difficulty would be found in districting by the convention.

Mr. Kilbourn said that he did not know that it was necessary for him to disclaim being actuated by any mere party views in the course which he had taken on this question. He would, however, disclaim any such motives. He knew that there were many gentlemen on that floor who were opposed to cutting up the counties, and he believed that they fairly represented the views of their constituents. He had voted for the system under the force of instructions, but believed it to be a bad one. However, he did not consider his instructions as extending beyond Milwaukee County. The views of the people of Grant County, for instance, might very probably differ entirely from those of the citizens of Milwaukee County. The latter ought not, in that case, to insist that the former should be cut up into single districts. He held that each county should be left to itself in this matter. He thought this proposition was calculated to do justice to all the counties severally. Nor could he see how it was inconsistent or out of place, as had been charged by the gentleman from Dodge (Mr. Judd). If it was out of place, however, the committee of revision could easily put it in a proper place. It might be introduced as an amendment qualifying section 4 of the legislative article.

Mr. Lakin said that he had long ceased to be surprised at anything; he had seen too much of politicians arguing on one side of a question and acting on the other—building up schemes with one hand and throwing them down with the other. He had heard no substantial argument advanced against the single district system.

He thought that one strong argument in its favor was that it would promote harmony. All knew that much difficulty arose prior to elections in selecting candidates. By adopting this system the first and most difficult question would be decided, viz., from what sections of the county to select the candidates. It would define rights and remove all bones of contention, harmonizing matters from the beginning. A county might be regarded in the light of a family, wherein it was necessary that individual rights should be defined and no difficulty left for the head of the family to settle. If peace was the object to be secured, by all means adopt the single district system. If this principle was not correct, why adopt it in electing members of Congress? If it was right in that case, it was equally applicable to the election of members of the state legislature. The system of single districts was in accordance with the purest principles of democracy. Had not a minority rights, and rights which ought to be respected? Could the majority do no wrong? I claim that it does not follow because there is a small majority on one side that the other shall have no rights.

Mr. Lakin said that he did not know whether his constituents were in favor of the measure or not. He acted on his own views of right and wrong, and though Grant County might lose by the adoption of the system, believing it to be right, he would go in for it. There was some force in the argument of uniformity. He did not believe in one county being governed by one system and another by a different one. He wished to see an article on this subject adopted which should be general and universal in its operation. It had given him great pleasure to hear so many gentlemen on that floor declare themselves in favor of a proposition which he regarded as so perfectly just in itself.

Pending the question on the amendment of Mr. Kilbourn, Mr. Doran moved that the convention take a recess until half past two o'clock P.M., which was agreed to.

HALF PAST TWO O'CLOCK P.M.

The question pending being on the amendment of Mr. Kilbourn to No. 18, article on apportionment of representatives,

Mr. Doran said that pending the collection of the house he would say a few words. It seemed to be involved in a cloud and was not

yet fully determined what was Democracy. Some said it was opposition to banks, some that it was opposition to the single district system. Without pretending to decide the question for others, he felt bound for himself to oppose the amendment now before the convention. When he was nominated for a seat in that body, his constituents had required of him and other candidates their views on the single district system. He had declared himself in favor of it. They opposed it, and he now felt bound to carry out what he considered his pledge to them. He thought there was every reason for a Democrat to go for a single district system. He could not appreciate the objection spoken of by the gentleman from Lafayette, as to the danger of gerrymandering. The districting would be in the hands of the county itself, by its representatives—so the amendment contemplated—and he could not believe but that the rights and interests of the people of Grant County would be safe in the hands of their representatives now on this floor, or of any subsequent delegation from there in the legislature. The argument of the gentleman, if it had any validity, was against the principle itself, not its incidental difficulties. The system brings home the representative to his constituents and requires him to be chosen by those who are best acquainted with him. It was this that the gentleman feared; there was nothing to be feared but this. As to the difficulty which the gentleman from Racine (Mr. Sanders) saw in districting his county, his colleagues did not agree with him as to the existence of any such difficulty, and he believed they were fully competent to district it so as to do justice to all and every part. It was a blow at the system itself, made in this form for greater effect—for what political ends the gentleman himself best knew. He was surprised to see the question debated now, when the people had generally decided on it.

Mr. Sanders said he had not spoken of an absolute difficulty existing in the Racine delegation. He had only put a case, and he would put it again, that the gentleman might fully understand it. By the apportionment adopted, Racine County would receive two senators and five members of assembly. Suppose the Racine delegation in the convention were divided four to four as to the proper method of districting the county, and could not agree. How could the question be decided, and still their rights be preserved? Would the gentlemen from the north, south, and west—from St. Croix, or Grant, or Green—who knew nothing about the situation of the

county or its local interests, want to step in and decide these questions for us? Would it be proper that they should do so? It was impracticable to do justice in this way. He was surprised to see the gentleman charge that his opposition to the scheme was for political ends. That gentleman probably felt the shoe pinch his own heel, as he was so prompt to mention it. For himself, he disclaimed it. It was well known that Racine was largely Democratic, and he did not believe that gerrymandering could have much effect in changing the character of its representation. But there were difficulties in districting Racine, and his colleagues saw them. The difficulties were these: No assembly district was allowed to be divided in forming a senatorial district; consequently, as they would have two senators and five representatives, one senator must be elected by two assembly districts, and the other by three. This made it almost impossible for the Racine delegation to agree upon the method of districting. The interests of different sections were diverse. Moreover, their delegates in this convention were not sent here to district the county. They were instructed to go for the single district system, but this was quite another thing. He was in favor of providing in the constitution for the single district system, and leaving it to the legislature to arrange the details. This was what the people intended and desired. Gentlemen might talk about Democracy, but he believed it was Democratic to represent his constituents—to do what they had sent him for, and nothing more. He did not believe any gentleman here came instructed how to district his county. The plan proposed was a trap sprung upon them for political purposes, and he hoped it would be rejected.

The question was then taken on the adoption of the amendment, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 12, negative 54; for the vote see Appendix I, roll call 139].

Mr. Case moved a reconsideration of the vote taken this morning on concurring in the report of the committee on No. 18, article on apportionment of representatives.

He said his object was to get a fair vote in relation to the claims of Waukesha County; and then if his claims were voted down he would be satisfied. He was aware that the proper time to make his claim would have been when the question was on the recommitment, but he was under a misapprehension at the time in

relation to the instructions with which it had been recommitted. He now desired a reconsideration, that the claim of Waukesha might be presented fairly.

Mr. Whiton spoke.

[Mr. Whiton said he hoped the motion would prevail, not that he would vote for the proposition which the gentleman from Waukesha proposed to make, but that he wished to record his vote against the amendments of the committee. He was opposed to adding a member to the counties of Calumet and Manitowoc, when the two counties together had but about two-thirds the population that entitles them to one member. He could see no propriety or justice in this addition.—*Tri-Weekly Express,* Jan. 20, 1848.]

Mr. Lakin was in favor of reconsidering. He thought it was wrong to depart from the premises laid down as the basis of apportionment. What was the proper basis of representation, he inquired. Population, and population only. The doctrine of property qualification had been exploded long since. Counties, then, should be represented according to their population— not by the dignity of county organization or the property they contained. If this were the correct principle, then the amendments adopted were wrong, as they gave representatives to counties not entitled to them by population.

Mr. Sanders moved a call of the convention, which was ordered, and Messrs. O. Cole, Colley, Fox, and Mulford reported as absent.

Mr. Harvey moved that Mr. Colley be excused from his attendance, which was agreed to. Mr. A. G. Cole moved that Mr. Mulford be excused from his attendance, which was agreed to. Mr. Richardson moved that all further proceedings under the call be dispensed with, which was agreed to. And the question having been put upon the motion to reconsider, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 34, negative 32; for the vote see Appendix I, roll call 140].

Mr. Case moved to amend the report of the committee by striking out in the twenty-fourth line the words "one senator" and inserting the words "two senators"; also by striking out in the fiftieth line the word "five" and inserting the word "four." And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 26, negative 40; for the vote see Appendix I, roll call 141].

Mr. Case moved to amend the report by striking out in the fiftieth line the word "five" and inserting the word "six." And the question having been put, it was decided in the negative. And the ayes and noes having been called

for and ordered, those who voted in the affirmative were [affirmative 25, negative 41; for the vote see Appendix I, roll call 142].

Mr. Case moved to amend the report by striking out in the twenty-fourth line the words "one senator" and inserting the words "two senators"; also by striking out in the fiftieth line the word "five" and inserting the word "three."

Mr. Case said the proposition he now offered was to give Waukesha two senators and three representatives instead of one senator and five representatives. It was acknowledged that on the score of units Waukesha was entitled to a larger representation than had been assigned her, and he said no gentleman could figure her entitled to any less than he had proposed to give her in the amendment he now offered.

Mr. Judd spoke.

Mr. Gifford said he was sorry his colleague in seeking justice to Waukesha had offered this amendment, and he hoped the convention would not do her so much injustice as to adopt it. It was impossible to do justice to her by this in connection with other propositions already disposed of. One senator would have to be elected by three and the other by two assembly districts—one by 5,000 and the other by 2,000 people, which would be grossly unequal. He hoped the convention would not adopt it.

Mr. Cotton thought his constituents would prefer two senators and three representatives, to one and five.

Mr. Case explained. The convention would see the dilemma in which they had placed Waukesha, making it necessary for her either to give up her proper representation or to incur the lesser evil, as he thought, of an inequality in the senatorial districts. He had offered the amendment only as a last resort. If it was adopted, his plan would be to make one large assembly district and elect a senator from the same, leaving the other senator and two representatives to be elected by two smaller districts. Waukesha was entitled to nine units of representation, and what he wanted mainly was to get them. He would have preferred one senator and six representatives.

Mr. Gifford said his honorable friend had made an explanation in his way, and it might be thought, unless he replied, that he was satisfied and saw the matter in a new light. But it was not so. He could not yet see any reason for such a division of Waukesha.

Mr. Judd spoke.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 23, negative 43; for the vote see Appendix I, roll call 143].

Mr. Case moved to amend the report [on No. 18, article on apportionment of representatives] by striking out the twenty-second and twenty-fourth lines and inserting: "The counties of Waukesha and Walworth shall be entitled to elect three senators," which was disagreed to.

The question then recurred upon concurring in the report of the committee.

Mr. Harvey said he hoped the convention would not concur. The amendments so changed the ratio that Waukesha was really entitled to the increase she had asked and which we had refused to accord to her. After all the smoke which had been raised over the apportionment, to so little purpose, he thought it was best to return and adopt the report of the committee as it first came from their hands. As the gentleman from Rock (Mr. Whiton) had said, when in adopting the single district system we had resolved by an overwhelming majority to disregard county lines altogether, it was absurd to talk of giving any county more than its population entitled it to on the score of its county organization. The populous counties would not consent thus to throw away their rights. Mr. Brownell hoped the amendment would prevail. The strict rule of population would operate with great severity, and he thought with injustice, towards the northwestern counties. The counties of Crawford, St. Croix, Chippewa, and La Pointe extended a distance of over four hundred miles, and to give them but one representative and one senator would be equivalent to no representation at all. With the representation they had had heretofore they had been unable to secure their interests and make their influence felt. He thought it was highly proper and no departure from right, to give them an additional member. Their population was not known definitely, but it was probably much greater than the estimate of the committee.

Mr. Harvey inquired what was the probable population. Mr. Brownell said he thought it would exceed 6,000.

Mr. Harvey then called for a division of the question, remarking that he would be willing to give them an additional member, but not the counties of Calumet and Manitowoc.

Mr. Lovell hoped the amendment would not be concurred in. It had been obvious to him from the beginning that it would do injustice to the other counties. He had every disposition and motive

to give the smaller counties all they were entitled to, but this was giving them too much and was unjust to the other counties. The reason applied fully to the case of Crawford and the other northwestern counties. As the apportionment stood at first they were overrepresented more than any other district in the territory. If we abandoned population as the basis of representation in some counties it should also be done in the rest. They should all be served alike. It was necessary at any rate to have a fixed plan or principle. The amendment cut loose from all principle. That the committee had been liberally disposed towards the smaller counties was evident by the fact that they had allowed the northwest counties an overrepresentation of 3,000 or 4,000 and Calumet and Manitowoc of over 1,000. It was preposterous to ask any more.

Mr. Richardson said it was known that he was one of those who contended that each county should have a representative at any rate. He acknowledged that population should be the basis as a general rule, but there are exceptions to all rules and there should be to this. The case of small counties was an exception to the general rule. Each organized county had separate interests of its own—it was a small republic—and could not be properly represented by any but a citizen who resided within it. Who else would feel the same interest in it and be as well disposed to secure its interests? The effect would be then, if nothing but population were regarded, that counties which had not quite enough to entitle them to a representation would be uncared for. This would be unjust. He had been willing, he said, in the first place to give to each county a representative and to go upon the basis of population. He thought this would give just about a fair proportion to both large and small counties.

Mr. Featherstonhaugh hoped the amendment, at least as far as it related to Manitowoc and Calumet, would be adopted. It had been said that population should be the only basis of representation. We of the more sparsely settled counties have claimed that territory should be in part the basis. It would be preposterous to go into any further argument to establish this position. Heaven had given us land, but the people had not yet come to occupy it. They would do so soon, however. The interests of those counties are to be permanently effected now when the state is young. Those interests should not be weighed merely by the number of people at present in the county. But as to Calumet and Manitowoc he would repeat what he had often said—that those counties were separated by an impassa-

ble barrier and had no interest or feeling in common. One was agricultural, the other commercial. They had no intercourse, and they would be illy mated. Unless each were allowed a representative, Calumet would be in effect swallowed up in Manitowoc. He appealed to the liberality of the convention to anticipate their population by a little and give them even a little more than they were entitled to, rather than allow them to be wholly unrepresented. The former convention had been liberal with them, and so had former legislatures.

Mr. Harvey said that if the argument of the gentleman from Calumet amounted to anything it amounted to this: that it was necessary to represent the harbors and woods of Manitowoc and the mosquitoes, swamps, and tadpoles of Calumet. He goes against population as a basis and he claims no other except the difference in the character and productions of the two counties. To meet his views and yet secure justice to the other counties it would be necessary to form a new apportionment throughout.

Mr. Beall spoke.

Mr. Featherstonhaugh, in answer to the gentleman from Rock, said he had not taken the position that population should not be the basis of representation, but the contrary. He had said that territory should be the basis in part, but population in the main. And in asking a member for each of the counties of Calumet and Manitowoc he did not feel that he was begging anything to which they were not entitled. Those counties were entitled to it as much as the county of Rock itself. There was a feeling of self-reliance, of patriotism, and of county pride which existed in a small county as much as in a large one. As to the swamps, etc., which so much disturbed the gentleman, he would say that he would make use of the arguments in advocating the rights of the small counties which experience had led him to think were most effectual, and he would never desist so long as he could find one Archimedean spot on which to rest his lever.

The question was then taken on concurring in the report, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 51, negative 15; for the vote see Appendix I, roll call 144].

The question was then put upon ordering the article to be engrossed and read a third time, and was agreed to.

The convention then resolved itself into committee of the whole for the further consideration of No. 7, article on the judiciary, Mr. King in the chair.

The vote rejecting the proviso offered by Mr. Martin was reconsidered. And the question being on the adoption of the proviso, Mr. Dunn made a few remarks in favor of it. The proviso was adopted.

Mr. Vanderpoel offered an amendment—an additional section—providing that the legislature should appoint a committee to revise the practice, forms, etc., of judicial proceedings. Mr. Dunn requested as a favor that the gentleman would withdraw his amendment for the present. He said a number of legal gentlemen of the convention had the subject in contemplation and were engaged in preparing a section on this subject. Mr. Vanderpoel withdrew his amendment.

Mr. Kilbourn offered an amendment to section 4, to insert the word "all" in the third line after the words "majority of," so that a majority of all the judges of the supreme court should be necessary to a decision. He remarked that he thought the committee themselves would concur in this amendment. In the printed bill it was established that a majority of the judges should be a quorum for business and a majority of those present only for a decision. Three were a quorum for business and two a majority of that quorum. So it might often happen that, with a supreme court composed of five judges, the decisions of the courts below might be reversed by only two of them. He thought this should not be so.

Mr. Dunn said he was opposed to inserting the amendment in the place proposed. It would cause difficulty. A majority makes a quorum for business. A majority present should be able to make a decision. If the amendment prevailed, it might be necessary, after a question had been argued, to send out and bring in judges who had not heard the argument to help decide it. If such an amendment were put in at all, it should be put in in another place. It might be proper to provide that four of the judges should be the quorum for business, and then a majority of them required for a decision; but he did not think the amendment of the gentleman from Milwaukee a proper one.

Mr. Kilbourn said his object was to guard the rights of the parties to suits against decisions which might not really reflect the opinions of a majority of the court. It was expected that there

would be five judges on the bench. If four were required for a quorum and the concurrence of three for a decision, that would be sufficient to answer the end he had proposed. He desired to keep the bench full, and was not particular as to the manner of it—any way that suited the honorable chairman of the judiciary committee.

Mr. Dunn said he had given his reasons for going against this amendment. If the gentleman offered one which he thought would be an improvement, he would go for it. The committee were satisfied with the article in its present form.

The amendment was lost.

Mr. Folts offered a substitute for the twenty-first section, providing for the election of county attorneys, etc. Mr. Dunn said he would like to see such a provision in the administrative article but he thought it would not be properly placed in the article on judiciary. Mr. Folts withdrew his substitute and moved to strike out the twenty-first section, which was agreed to.

Mr. Chase offered an amendment, the effect of which was to reduce the term of office of the judges from ten to five years.

Mr. Whiton spoke.

[Mr. Whiton thought that judges were not elected to carry out matters of public policy, but to be governed by truth and justice, and hence it was not necessary that their acts pass in review before the people as often as the officers. He thought five years was too short a term for a judge and was not prepared to say then that ten was too long. *Tri-Weekly Express*, Jan. 20, 1848.]

Mr. Chase said he hoped the amendment would be adopted. The argument which seemed to be most relied on by the advocates of long terms was that brought up by the gentleman from Rock. It was that a judge was not elected to represent any particular views or to deal in matters of ever-varying expediency like a legislator, but was concerned only with the study and application of immutable principles, and that as the mutability of public opinion and policy was valid reason for short terms in the case of legislators, so the immutability of the duties of a judge was a valid argument for his permanent continuance in office. He could see no great force in this. Legislators, as well as judges, should deal in immutable principles, although they were not wholly confined to them. But to whom were judges engaged in administering justice, and who were principally concerned in their labors? The people. They, then, are the ultimate, and the proper, and the best judges of the man-

ner in which justice has been administered to them. Then there should be a frequent, or a somewhat frequent, submission of authority up to them. Judges who had done their duty and deserved well would be reëlected; those who had not would be dropped. What was there in the judiciary any more than in politics or religion, which should not be submitted to the people? He could see nothing. If this were so, then certainly a submission once in five years was not too often. Ten years seemed to place the judiciary practically beyond the power of the people; and some gentlemen even advocated so long a term for that very purpose.

Mr. Dunn said he entertained a high respect for the gentleman from Fond du Lac, though he did not concur in his opinions. The doctrine of short terms and low salaries was a favorite one with many, and in general he believed in it. Yet in the case of judges there was not the same necessity for a frequent recurrence to the people as in the case of political officers. As had been said, the principles with which they were concerned were immutable, and it was the work of a life of patient study, undisturbed by the cares of ambition or the passions which beset almost every other occupation, to become acquainted with those principles and follow them out in all their bearings and consequences, and to become so imbued with their spirit as to be a fit repository and oracle of justice. To secure good judges it was necessary to offer sufficient inducements for men of the highest order of talent to devote their lives to that study. A term of two or three years offered no such inducements. No lawyer, with a practice worth $2,000 or $3,000 a year (and a good lawyer's practice should be worth that) would give it up and break up all his business arrangements, to take the office of judge with a salary of $1,200 for three or five years, with the uncertain prospect of a reëlection. Another reason for long terms was that too frequent elections would place before judges temptations to swerve from duty and to seek popularity as a means of reëlection, in ways which were unbecoming to the dignity of their station. A judge, after giving up his other pursuits in life, and in a measure unfitting himself for them, would very naturally desire a reëlection as a means of subsistence. His pride, moreover, would prompt him to the same, as a failure to secure a reëlection would be construed into a mark of disapprobation. Could it be supposed that with such incentives judges would not do as other candidates do—use every means in their power to secure a reëlection? I have given the sub-

ject (said Mr. Dunn) the fullest consideration of which I am capable, and I am satisfied that the interests of the judiciary and the people will be best subserved by establishing a term of ten years. If anything in the government should be stable, it should be the judiciary. It was not desirable that the judiciary should be subject to all the ebbs and flows of public opinion. He thought that by the provision for electing a judge once in two years we had secured all necessary accountability in the judiciary.

Mr. Rountree said he was in favor of the amendment, and the remarks of the honorable member from Lafayette had not changed his views. It was very true that experience and long study were necessary to make a good judge, but where these qualities were found we had every reason to believe they would be called into requisition by the people. There was no danger that the people would elect bad judges, when good ones were to be found. The system of an elective judiciary was new in practice, and many even now thought it was dangerous. For his part, he said, he had been in favor of it for years, and his convictions were strengthened daily. The system was now becoming popular among all classes. The reasons that existed for making the judiciary elective at all were equally strong in favor of short terms, for if the intelligence and virtue of the people were a sufficient warrant they would elect good judges once in ten years, it was equally so that they would do it oftener. As to the argument that it was necessary to offer long terms as an inducement for lawyers to give up their business to become judges, such men would have the security on which our whole system of government is based—the virtue and intelligence of the people—that, if the public interest required it, they would be reëlected. Ought they to have any other security? He did not believe there would be any necessity for a good judge to swerve from duty to secure a reëlection. He did not believe it would be even good policy for them to do so. Moreover, there was an additional reason for short terms in the present circumstances of the territory.

There are few persons among us at the present time who are qualified for the office of judge and who are so known to the people, newcomers as they are. It was quite possible and probable that proper selections might not be made at first. Ten years was certainly too long a time to endure an incompetent or corrupt judge. But if they were elected for five years, as there were five of them one would be reëlected every year; the people would become ac-

customed to vote for them, and to feel the responsibility when so important a trust devolved upon them, and at the same time the bench would be continually filled by experienced judges. He believed that the system of electing judges by the people, and frequently, would not injure but on the contrary would elevate the character of the judiciary and of the people at the same time, and he was therefore very desirous to see the amendment adopted.

Mr. Jackson said he felt it his duty to oppose the amendment proposed by the gentleman from Fond du Lac (Mr. Chase). If judges must be made elective, he thought they should hold their offices a sufficient time to give stability to the courts. The people were in favor of electing their judicial officers. He was instructed to go for this principle and came here prepared to do so. This he said was a great experiment, but it must be tried, and he would not prevent it if he could. But he confessed he had his fears for the result. He doubted whether the system would be found to work as well as its friends anticipated, and it should be entered into with caution. Ten years was perhaps too long a term, but five was too short; he preferred eight years. He had voted for the annual election of governor, senators, and other state officers. But the judges were elected for an entirely different purpose and should be kept far away and above party strife, so far as their official duties were concerned. As had been stated by the gentleman from Lafayette (Judge Dunn), if the judges were to be elected frequently they would be liable to be governed in their official duties by popular impulses. It would be strange if they did not have an eye to a reëlection and consequently would be shaping their course during one term for reëlection to another; and he thought they should be kept as far as possible from temptations of this kind.

But it is said we may get a bad judge, and if so we ought to have an opportunity of putting another in his place. He believed short terms were the very way to get incompetent judges. Lawyers of the first talents would not take the office for short terms. He supposed that judges would be nominated as other officers were, by party caucuses and conventions, and the more frequently they were had the less interest would the people feel in them, and he feared the consequence would be that some third-rate lawyer who could hardly get practice enough to support himself would, by some political maneuvering or through party sympathy, procure a nomination,

and then the party must elect him of course. He thought if the judges were elected for eight or ten years, the people would be apt to take the more interest in the nominations. They would be more likely to attend the primary meetings and see that such men were put in nomination as they themselves would be willing to vote for, and when elected the judges would be free from considerations of a second election. He did not agree with the gentleman from Grant (Mr. Rountree), who said he would have the judges elected frequently like other state officers. Frequent elections would lower the dignity of the courts, render them unstable, and subject them to the popular breeze. We might about as well do away with the higher courts as to have annual elections of the judges. He knew this was against the popular doctrine, but he had fears for the whole system.

Mr. Whiton spoke.

Mr. Gale said that in justice to himself he would state that he opposed the ten-year term of judges when the subject was before the judiciary committee, and he had heard nothing that would induce him to change his opinion. He believed that five years was sufficient length of time for a judge to hold his office before he rendered an account of his stewardship to the people, and if he had discharged his duties with fidelity and ability, there was no doubt but that he would be reëlected. With the gentleman from Rock (Mr. Whiton) he did not believe in a "stable government founded upon long terms of office"; neither did he believe in a stable judiciary system founded on the same basis. It was one of the beauties of the elective system that the officers should occasionally lay their commissions at the feet of the power that gives them, and then, if there is an injudicious election, the difficulty can be remedied. In England long terms of office are given to the judges for the avowed purpose of protecting the people from the encroachments of the government, and gentlemen propose here to give long terms to protect the government. He did not believe the arguments were good in both instances.

The gentleman from Rock (Mr. Whiton) had argued that long terms of office were necessary to protect a citizen from public excitements, and had instanced a private citizen being sued by a county just on the eve of a reëlection of the judge who presided at the trial; but Mr. Gale thought there could not be the least danger, as a higher tribunal had been provided in which every act of the

judge could be reviewed, and by others, too, who were located remote from such places of excitement. The gentleman from Rock had also argued that it mattered not so much what the law was if it was only settled and known, and had instanced the time of a minor coming of age—that it would make but little difference whether it was twenty-one or twenty-two. And he supposed that the gentleman intended it to be understood that the judge had something to do in making the laws. But Mr. Gale thought it was sufficiently settled that the judge had nothing to do with making the law, but his duty was confined exclusively to administering the law as he found it in the books, and if it was not administered correctly, the injured party had another tribunal to which he could submit his case and obtain justice.

The honorable chairman of the committee (Judge Dunn) had contended that if a short term was prescribed, the best lawyers would not leave their profession for the bench for fear that they could not get reëlected after the expiration of their first term; but if it was true, Mr. Gale would ask how fit men were to be obtained to fill the two-, four-, and six-year terms under the classification as provided for in the report of the committee. If the argument was good it would apply with double force to the shortest time of two years as provided in the article reported. He thought the salary of $1,500 would command the best talent in the state, and the talent, too, of those who would not fear to lay their commissions at the feet of the people at the end of every five years.

The honorable chairman had also contended that if this amendment were adopted, the first term of the judges would be spent in electioneering for a reëlection; but Mr. Gale had a higher opinion of those who would probably be elevated to the bench at a popular election. The past year had satisfied him that the people in this territory were possessed of as high an order of integrity as any in world, and were every way capable of selecting those who were to govern them or administer their laws. Gentlemen seem to be laboring under the impression that it was unpopular for a judge to administer the law faithfully and fearlessly, but he assured them that the stern integrity of the judge, unflinching in the discharge of his duty, was the only passport to popular favor; and the moment anyone lowered himself to the low station of bending his decisions to aid party friends he would be scouted at and abandoned by all parties and be left alone in his disgrace, unhonored and despised.

But when the judge discharges his duty as an honest and faithful lawyer there is no danger but his services will be appreciated by the people and he will be retained on the bench as long as he may wish.

All concurred in the necessity of an independent judiciary; but there was a judicial independence and a judicial irresponsibility; and, while he contended for the former, he was convinced that the term of office of no judge should be such as would relieve him from that sense of responsibility to the sovereign power which every incumbent in office should feel—such a responsibility to the people that they would not adjourn court for the express purpose of hunting, as had been done under the present system in this territory. The people asked for a reform, and he was satisfied that one was needed; and the only complete and satisfactory one in his opinion was an elective judiciary and a reasonably short term of office.

Mr. Kinne said that before the question was taken he would make a few remarks. As for the principle of an elective judiciary, he fully believed in it—believed that it was safe and practicable, and therefore he hoped the amendment would prevail. It was but an experiment as yet, and it was not good policy, therefore, so to start that if any mistake were made it could not be remedied but by a change of the constitution. It was dangerous to establish an elective judiciary and at the same time, before it was established that good judges would thereby be secured, to make the term of office ten years. It was known that the committee had serious doubts as to the propriety of the elective system, and that that feeling was entertained by many others. In view of these facts, it was our duty to guard against the possibilities of error which might exist. A term of ten years was equivalent to a life term, and the probability of having to endure a bad judge so long was something to be seriously regarded. If there was any danger to be apprehended from the elective system, such a long term increased it tenfold. It had been argued that long terms were necessary to secure stability in the determinations of the courts. It was true that stability was desirable, but not that kind of stability which would be produced by long terms. The stability desirable was that produced by a conformity to truth and justice, which were stable; not that arising from the pertinacity and pride of opinion of men beyond control. Any man, he said, who would look at the records of the supreme court of this territory would bear him out in this. As to the re-

marks about immutable principles, it was not contended that a ten-year term was necessary to preserve these principles. They were safe, and judges elected for five years would decide according to them. The argument was not a new one. The gentleman from Rock had brought it up in the discussion of the legislative article, while with the zeal of a new convert to Democracy he was laboring to demonstrate the impropriety of a longer senatorial term than one year. He had said the duties of a judge and a legislator were radically different. But he had not made any difference appear which should make a long term proper for one, and for the other not. Both were entrusted as servants of the people with responsible duties and both ought to govern their actions by the immutable principles of justice and reason. There was no more reason for stability in the administration than in the enacting of laws. The gentleman from Rock did not see this, and not seeing it his argument had little force. In his new zeal for Democracy he had declared that all officers except judges should be kept in office the shortest possible time in which a cycle of their duties could be completed. If any reason existed for this at all, it would apply as well to judges as to any other officers. But (continued Mr. Kinne) I have been a Democrat some twenty-five years longer than that gentleman, and my fervor has somewhat cooled. My Democracy would be satisfied with a term of two years for senators and governor, and to correspond with these a term of five years for judges. This would be a proper correspondence between the law-enacting and the law-interpreting power, which is a very desirable object.

Mr. Kilbourn offered as an amendment to strike out "five" and insert "eight" years as the term of office of the supreme judges. He said he was in favor of the elective system but was opposed to the term of five years. It was too short. The term of eight years had been adopted in New York in their new constitution, after large discussion by the most talented and experienced men in the country. Their system bore a great analogy to ours in other respects, and he thought they should not differ in this. The time would soon come, with the increase of population, when it would be necessary to increase the number of judges to eight. Then, with a term of eight years, it would be necessary to elect one in each year. If the term were five years, then it would be necessary sometimes to elect two in a year. He thought the term of eight years was a very proper medium between the extremes proposed. As to the danger of long

terms on account of keeping a bad judge, if one were unfortunately elected, in office a long time, there was a way provided in the bill to remedy that. It was provided that a judge might be removed by the legislature on good cause being shown. It was not necessary that the offense should be an impeachable one. It might be bad habits, incompetency—anything which in the judgment of the legislature made a change expedient. Thus the people would have complete control over the judiciary, and there could be no danger in a term of eight years.

Mr. Chase said he had hoped the advocates of a long term would have allowed the question to be taken fairly on the question of a five-year term. If that were defeated, then he would go for the next lowest term. He hoped now the gentleman from Milwaukee would withdraw his amendment till the vote had been taken on the five-year term.

Mr. Kilbourn withdrew his amendment. The question was then taken, and the term of five years was adopted, 28 to 24.

The committee then rose and by their chairman reported progress thereon and asked leave to sit again. Leave was granted.

On motion of Mr. Vanderpoel the convention adjourned.

THURSDAY, JANUARY 20, 1848

Prayer by the Rev. Mr. Penman.

The journal of yesterday was read and corrected.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 18, article on apportionment of representatives.

Mr. Prentiss, from the committee on schedule and miscellaneous provisions, made the following report, to wit:

"The committee on schedule and miscellaneous provisions, having been instructed by a resolution of the convention to inquire into the expediency of incorporating into the constitution a clause prohibiting the legislature from passing any law establishing rates of toll for grinding grain, or rates of interest for money, have considered the subject assigned them and are unanimously of opinion that it would be inexpedient to incorporate into the constitution a provision inhibiting the legislature as the resolution suggests.

"It may be objected, however, that any restriction upon rates of toll or rates of interest is an interference with the private dealings of individuals and a restraint upon private rights, and should therefore be prohibited in the constitution. But it is equally clear that the constitution itself is a restraint more or less upon private rights. Indeed, it is impossible, in the nature of things, for men to be subject to a government and retain all their natural rights. The idea of government implies restraint. The parties to it mutually surrender a portion of their rights for the better security of the rest and for the promotion of their welfare. But in the opinion of the committee the whole subject is clearly a matter of legislation, and the constitution is not designed to contain the minutiae or details of legislation, but fundamental principles; and they would therefore ask to be discharged from the further consideration of the subject.

[THEODORE PRENTISS]
E. J. COTTON
G. W. FEATHERSTONHAUGH
J. T. LEWIS
J. WARD
JOHN L. DORAN"

Mr. Fenton introduced the following resolution, to wit: "*Resolved*, That the per diem pay and mileage prescribed by law for members of this convention be allowed to William S. Hamilton for and during the session, and that the President be requested to issue his certificate therefor."

Mr. Doran moved that the fifth rule be suspended for the adoption of said resolution now, which was disagreed to.

Mr. Case moved a reconsideration of the vote taken yesterday by which resolution No. 6, introduced by Mr. Lewis on the eighteenth instant, was rejected. And the question having been put, it was decided in the affirmative. And a division having been called for, there were 25 in the affirmative and 21 in the negative.

The question being on the adoption of the resolution, Mr. Jackson said he could see no necessity for the proposed measure. The people would have the constitution before them and would be capable of judging of its merits without an address. He thought it would be the better course to leave the question of the adoption of the constitution to the people and go on and prepare a constitution. Mr. Judd concurred with Mr. Jackson.

Mr. Lewis stated for the information of the convention that the proposed measure was no new thing. If gentlemen would refer to the journals of all the conventions which had been held for similar objects, except indeed the last one held in this territory, they would find that such an address had always been promulgated. This had been the case in the conventions held in New York in 1822 and 1846. No objections were made to the matter in those conventions, and it was thought correct by everyone. He was willing to admit, if it would please certain gentlemen on that floor, that the last convention which sat in Madison was the wisest body of men that ever was convened here. Still it did not follow that they were perfectly wise in omitting to publish an address. On the contrary, he was inclined to believe that the omission to do so was one cause of the defeat of the constitution which they had prepared; because, no address having been adopted by the convention, one was afterwards prepared and published by the Democratic members of that body; and it thus went forth stamped with a partisan character and claiming the constitution as a party instrument. It was in order that the address might come properly before the people, and not as a party measure, that he had offered the resolution.

Mr. Kilbourn thought they had already been engaged about six weeks in preparing an address to the people. If it was proposed in any manner to operate on the minds of the people by the arguments to be contained in the address, that was the very reason why he would oppose it. He was opposed to exerting any undue influence over the minds of the people. The constitution should go forth on its own merits, and he hoped it would be found in itself all the address that would be necessary.

Mr. Judd made some remarks.

Mr. Lewis said it seemed to him that the main argument against putting forth the address was that the people would get too much light on the subject. He for one was in favor of giving them as much light on it as possible. It was not intended to put forth a

long and elaborate address, but merely a brief statement of the reasons which had led members to the conclusions which were adopted in the constitution.

(Mr. Lewis then read the address of the New York convention.)

The question was then put on the adoption of the resolution, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 33, negative 32; for the vote see Appendix I, roll call 145].

Mr. Vanderpoel introduced the following resolution, which was read, to wit: "*Resolved*, That the superintendent is hereby directed to furnish the secretary of the convention with a statement of the amount of stationery received by each member, with the cost of the same, and to deliver the balance purchased for the use of the convention to said secretary to be distributed among the members with the cost of the same."

The President announced the appointment of the following committee under the resolution introduced by Mr. Carter on the eighteenth instant, to wit: Messrs. Carter, Case, Featherstonhaugh, Nichols, and Warden.

No. 18, article on apportionment of representatives, was then taken up and read the third time. And the question having been put upon the passage of the article, it was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 56, negative 10; for the vote see Appendix I, roll call 146].

Mr. Lovell moved that article No. 18, on apportionment of representatives, be referred to committee No. 2, with instructions to distribute representation by single districts, not changing the number of members in any district, which was agreed to.

The convention then resolved itself into committee of the whole for the further consideration of No. 7, article on the judiciary, Mr. King in the chair.

Mr. Bishop offered the following as a substitute for the fourth section: "Section 4. There shall be a separate supreme court, which shall consist of one chief justice and two associate justices, said judges to be elected in single districts by the qualified electors thereof. At the first election for judges the chief justice shall be elected for the term of six years, one associate for four years, and the other for two years; but forever thereafter each and every judge of the supreme court shall be elected for six years, so that one judge of the supreme court shall be elected every two years."

Mr. Bishop said his object in proposing this amendment was to call out an expression of opinion on the subject of a separate supreme court. He believed the principle of having a separate supreme court was a correct one and hoped to hear gentlemen express their views freely on the subject.

Mr. Dunn said that he would state his objections to the amendment and the reason which influenced the committee to report the article as it now stood. The object they had in view was to present to the people a judiciary system which would be adequate to their wants and which at the same time would be cheap and could be supported without unreasonable taxation. If there was any point on which the people might make well-founded objections to the constitution which was now being prepared, it would be the matter of expense. The object, therefore, was to avoid an expensive government on the threshold. If there was a separate supreme court, the judges must have reasonable salaries and the civil list would be swelled. Another reason which had influenced the committee in reporting the article as it stood was that they believed the nisi system of the judiciary preferable to all others. No judges were so well calculated for the efficient discharge of their duties as those who were fresh from the trial of cases, wherein they had had all the advantages of the arguments of counsel. He could see no good reason for burdening the people at this time with the expense of supporting a separate supreme court; but if at any time the people should deem it advisable to organize such a court, after having tested the nisi prius principle, the article left it in the power of the legislature to do so; and this could be done at a time when the people of the new state would be better able to sustain the expense.

Mr. Dunn said that he understood that one of the reasons which induced some gentlemen to advocate a separate supreme court was that they supposed there would be danger in submitting the trial of cases carried up in error to the same judge who had sat on the trial in the court below; that a favoritism and courtesy would be extended to this judge by his brethren on the bench, which would induce them to affirm his decision contrary to their opinions of what was right. So far as his own experience had extended, he had never seen any ground for such a supposition. On the contrary, in the case of the federal judges sitting in bench, he had always observed a disposition to examine with particular scrutiny the decisions of their brethren below. There was a natural principle of emulation among the judges, as among other men. A judge who has a proper respect for himself and for the position which he holds could have no objection to having his decisions nisi corrected in the court above. Decisions nisi were often made in great haste, and it could not be expected that they would be uniformly correct. That judge

must be unreasonable who would assume to himself such infallibility. When his decision should be brought up on error he would be among the first to wish to revise it, for these decisions go forth to the world and are subject to be examined by men of the highest legal attainments. It was therefore entirely a mistake to suppose that such improper indulgence would be extended by his brethren on the bench to the judge whose decision in the court below should be brought up on error. It was an idea founded more on imagination than on reality.

The principal objection to organizing a separate supreme court was the additional expense which would be involved. If two distinct courts, a supreme and a circuit, were organized, it would be necessary to reduce the rate of salary. And having already reduced the term of office of the judges, if the salary were also reduced, where could men competent to discharge the duties of these offices be found who would accept of them? The practice of the law in this territory was a lucrative business and would continue so; and lawyers could not be induced to relinquish their practice and go upon half pay upon the bench. Reduce the term of office and the salary, and you will have a judiciary which will not be any honor to the state.

Why not submit this matter to the test of a little time? If it is not found to work well, the article is so framed that the people can at any time organize a separate supreme court. No great harm could be wrought in so brief an interval. He was of opinion that if a separate organization took place now, consequences would arise of a very injurious character. He had examined the subject maturely and could find no adequate arguments in favor of the amendment. On the contrary, he was opposed to a separate supreme court on principle, as not so good as the nisi prius system.

Mr. Lewis addressed the convention as follows: Mr. President—The question under consideration is one of no common magnitude. It is one, sir, in which the people of this territory feel a deep interest; and as my constituents, so far as I am informed, have expressed one and but one opinion, I feel that I should not be doing my duty to myself and to them, did I not at this time express my opinion and what I conceive to be theirs upon this important measure. And yet, sir, I feel a great reluctance in endeavoring to speak upon this or any other subject. When I look

around me and see men of acknowledged talent and ability—men whose hairs have grown gray in search of knowledge—men who have long occupied the bench and halls of legislation with so much honor to themselves and to their country—I can hardly expect to be either edifying or instructive; but I trust they will indulge me for a few moments. I will endeavor to be as brief as possible.

The question under consideration, as I said before, is one of vast importance. It involves the important inquiry: What power shall control the prosperity, the liberty, and the lives of the citizens of the great state of Wisconsin? When we consider that the security of the citizens of this state in the enjoyment of their property, character, lives, and liberty depends upon the proper and sufficient organization of our judiciary system, it seems to me that we cannot be too careful in investigating this subject. It seems to me we should pause and reflect and look about us and see what we are doing; we should let no party feelings or party prejudices, no selfish views or motives infest our bosoms or turn us aside from the path of justice and the path of duty. How many a poor victim has been hurried to his everlasting home by the unjust and cruel decisions of an incompetent and dishonest court! If the dead could be consulted, how many would be the unfortunate victims of a corrupt judiciary who would stand before us and tell us to beware of what we were doing—beware of the corrupting influences of your judiciary system! Although they are not now here in person to admonish us, yet they have left the record of their innocence to do so. They have left the protest of their innocence to the last breath of their existence, to admonish us. They now admonish us. "Their tears are in the raindrops, and their voice in the wailing wind." Let us take heed by their admonitions and see that not a stone is left unturned in investigating this important subject. Let no personal motives influence us—no heartburnings turn us aside from what we believe to be the path of duty and of justice. I do not expect, sir, that we shall get a perfect system. Perfection is not to be looked for in this world. I do not expect that we shall get a system that will suit everybody. Men necessarily entertain different views upon the same subject. Neither do I expect that we shall get a system which will not find its opposers; if not at the hands of the just, it will at the hands of the unjust.

No man e'er felt the halter draw
With good opinion of the law.

But it should be our aim to get a system as nearly perfect as human ingenuity can invent; and to this end I hope and trust the wisdom and the talent of this convention will be directed.

Although, sir, I entertain the highest respect for the talents and integrity of the honorable chairman of the committee who introduced this bill, yet I must beg leave to differ with him in some of the important points of this measure. And I must say that I am very sorry to see so much talent as he possesses arrayed in direct opposition to what I deem one of the most salutary and important parts of a judiciary system (to wit, a separate supreme court); and yet we could hardly expect him to abandon a mother who has given him so much nutriment. Sir, the bill introduced by the committee is in my opinion in direct opposition to one of the great and fundamental principles of jurisprudence, which inculcates that salutary influences are derived from the constitution of courts in such a manner that there shall be a regular gradation from the lowest to the highest, or until you reach the supreme tribunal or court of last resort. But what do you find here? A circuit and supreme court, and both equal, both held by the same men, both elected in the same manner and at the same time. The great difference which can affect their decisions is that the one is held in the country, and the other at the great city of Madison. Do men expect that these judges are to gain wisdom in the transition from the country to Madison? Or do they expect that this capitol is to lend them wisdom and that by sitting here they can correct the errors they have made abroad? Is this capitol to lend them that inspiration which will cause them to change their minds and correct their false impressions? Do men expect that after a cause has once been decided the decision will be reversed? No, sir. The man who decides the cause on the circuit is to go on to the supreme bench and carry there with him, if he has made an error, that same error, and will there be bold to advocate it; while on the other hand, the associate judges, feeling no great anxiety in the matter, will allow the error to pass by unnoticed rather than come out in direct opposition to one of their own number. What would be the consequence should they come out against one of their own number? Why, sir, the very

next cause that might come up for confirmation or reversal, the judge who had been humbled—who had had his pride of opinion wounded—would array himself in direct opposition to his associate. And what would be the consequence? Why, sir, he would go against his associate, right or wrong. So that if the judges are at enmity with each other we shall be liable to get corrupt decisions. If they are friendly with each other, we shall get the same. It will, in the latter case, be "Tickle me, Billy, do, and in turn I will tickle you." So that, take it which way you will—take hold of either horn of the dilemma—you are sure to get corruption. Men, sir, have that pride of opinion that they will not yield. Although they may see the error themselves after it has been made, yet they are too proud to say they were wrong. I do not pretend to say that this is always the case, but I say it would in many instances be the case. There are probably exceptions; but those exceptions are rare and can be found only when you find something approximating perfection, which is not found in the human kind.

Again, let us suppose a case which I think will be in point. Suppose, sir, that there should at any time be but three judges upon the supreme bench, and these are qualified to hold that court under the system introduced by the committee, and suppose those judges should be from districts No. 1, 2, and 3. Now, sir, districts No. 4 and 5 come up each with a case—now bear in mind that these gentlemen who introduce this bill are in favor of the people electing the judges who rule over them—suppose, I say, that districts No. 4 and 5 come up with cases; who are to decide them? Are these judges from districts No. 1, 2, and 3 of their choice? No. They had no voice in electing judges from those districts. Hence the great democratic principle about which gentlemen preach so loudly is entirely destroyed. The gentlemen have flown the track. Here they are going to make a part of the state submit to the decision of three judges, none of whom they had any voice in electing. "Oh, consistency! what a jewel thou art!"

But again, let us suppose another case which may occur under this system: Suppose that one of these three judges is the judge from the district in which the cause was decided, and the other two from other districts. Now, sir, two of these judges are a majority sufficient to decide any cause. Now, sir, when the cause comes up, here is one judge who has expressed an opinion in favor of the de-

fendant in error. Now, sir, he has only to get one judge to go with him to carry the case, while, on the other hand, the plaintiff has to get two. So you see the defendant has the advantage of the plaintiff by one judge.

Again, the duties of circuit judges lead them in entirely a different train of thought, and entirely a different field of labor from that of the judge of the supreme court. Hence there should be a division of labors, and each left to become more perfect in his own proper sphere. It will no doubt be admitted by all that greater skill and perfection is obtained by the division of labor when it can well be done. At least, I think my friend from Fond du Lac (Mr. Chase) will agree with me here. The particular duty of a circuit judge, sir, is to investigate facts and circumstances which arise in the common course of business transactions. He is not called upon to pay that attention to the law which is so necessary to a supreme court judge and which is so necessary to settle precedents and rules and principles for the government of all the inferior courts in the state. But on the other hand, judges who are called upon to sit upon the supreme bench would necessarily have to seek their library and study out and settle those nice points and vexing questions which so often arise in the course of judicial proceedings, and which no lawyer, be he ever so well read, can do correctly without frequent reference to books. I want to see a set of judicial reports from the supreme bench of this state which will be the polar star to all inferior courts—which will carry with them an influence wherever they may chance to go.

But again, another argument in favor of the separate supreme court system and against this system may be drawn from the fact that in making the circuit court the supreme court you impose officers upon different districts whom they had no voice in electing. Now, sir, I hold that the truly democratic ground is that all the people of the state shall have a voice in choosing the officers under whom they serve. In this system the judge elected by one district is to preside over the destinies of all the other districts in the state. As well might we say to New York or any other state, "You may elect a governor for us, and we will elect one for you," etc., etc. Now, sir, this may be what some gentlemen have called the great Democratical principle, etc. But I don't believe it has, like Roger's penknife, the maker's name upon the blade.

But, sir, can we expect it if our circuit judges, who are constantly on the move from one circuit to another, who have no time for study or to examine the law, and who necessarily can have no law with them to examine, are to form our supreme bench? Most certainly not. Wisconsin, under such a state of things, I imagine, would be the laughingstock, rather than the fountain of legal lore. But again, sir, another important reason in my judgment why these courts should be separated is this: We are now about to adopt an entirely new system of choosing our judges. We are now about to adopt what is termed the elective system. Great objections have been raised to this system by some men, and by men, too, who are entitled to respect and confidence—who are entitled to a hearing in this matter. (Not that I would give you to understand that I am opposed to the elective system.) But as I was about to say, it has been urged by sound heads that this system would operate badly; that it was a feature in an elective government which should not be brought into practice; and the great objection is that we shall get a party judge—that we shall have party decisions. Now, sir, should this prove true, it would be deplorable, indeed, and more particularly so should those same party or political judges be allowed to sit again on the same cause as a court of last resort, and there have the opportunity of sealing that awful political sentence which they might have chosen from party purposes to pronounce. The circuit judges, being elected in small districts—in the very districts where they reside, where they wish to make political capital, if at all—may be led astray from the path of duty; but should we have a sufficient supreme court, chosen from the state at large, who would necessarily have no party ends to subserve in any particular district, who would have no political views or interests in common with any particular district or portion of the state, how certain, how sure, would be the remedy to the great evil which so many see in the future operation of the election system!

But again, sir, let us look and see what the great argument which is brought against the separate supreme court amounts to. Let us see what it is. Say gentlemen, "Well, your system is perhaps good enough but it is too expensive, for the reason that more officers must be employed. We are a young people; we cannot stand this expense." What were the views of those gentlemen a few days since, when the salary of the governor was to be fixed? They were mighty rich then. They would give the governor from fifteen hun-

dred to two thousand dollars for doing nothing but stay at home on his farm, should he chance to be a farmer, or stay at home in his office, should he be a professional man—fifteen hundred dollars for taking the honor of governor; but now they are so monstrous poor they must dispense with justice, because the people are too poor. No, sir, this is no argument at all. It is all in my eye; that cock won't fight. I, sir, will go as far in reducing the expenditures of government as those gentlemen, and when the salaries of the officers come to be fixed, we will then see those gentlemen who talk of expensive systems show their magnanimity. I, sir, am going for reducing the salaries of these judges to one thousand dollars, just two-thirds of what these friends of prudence in expenditures have proposed. I want to see a cheap government and at the same time one that is sufficient. Short terms, low salaries, and equal and direct representation is my motto. But let us look a little further into this great argument—that the system is so much more expensive.

Suppose, sir, I had six days' labor in hoeing corn and three days' labor in cutting wheat, which in all would make nine days' labor to be performed. Now, sir, I should like to hear those gentlemen point me out the difference in expense, whether I employ nine men to do that labor in one day, or one man to do it in nine days. Most certainly there is none. Now let us apply this to our judicial system. Wisconsin has got so much judicial business to do. Where can be the difference, so far as dollars and cents are concerned, whether she employ five or eight men to do that business, so that she pays them for no more work than they do? But I contend, sir, on the other hand, that she will need no more, if as many, officers under the separate system, and can get her work done at a cheaper rate than in the mode proposed by the committee. By a division of the labor the officers will become more expert in doing their particular proportion, and hence less time will be employed in doing the business, and therefore less pay will be required. We do not ask, sir, that there should be any more judges elected under this system than the other, or that they should have any higher salaries. We only ask that they may be separated. We ask a division of the business. Take the same number, if you choose, and let a part be elected by general ticket for the supreme bench, and a part by districts for the circuits. We ask that there should be a distinction and not a double man made out of the same man. We have according to all accounts plenty of them now in the house. Don't give us a wheel within a

wheel. We want to see both wheels, and we want to see them separated—the one on one end of the axle, and the other on the other end—that they may support each other. It seems to me in the proposed manner they would be tottlish, lose their center of gravity, and tumble the whole load into the ditch.

Again, I am opposed to the report of the committee on another ground, which is that the terms are too long. I think, sir, that six years should be the longest term, and then I would have them graduated so that one judge (if there were three upon the supreme bench) would go out of office every two years, which would leave two old judges constantly on the bench. Six years, sir, is long enough for the people to have a poor judge inflicted upon them, and if he is a good one, and the people want his services, they will be sure to reëlect him. Not that I would not wish to see a judge an independent officer in the discharge of his duties; but I would not at the same time have him so far removed as not to feel that there is a power above him, as not to feel that he is responsible to the people. Frequent accountability to the people is well calculated to remind public officers that they are not, as some would feign wish to be, lords of the land. That although they can for a time decide the destinies of their fellow men, yet if they do not do it in conformity with the fixed principles of right and justice, they will be called to an account at the bar of public opinion and at the ballot box. That the voice of the people is the sovereign balm which will subdue their overgrown pride and teach them that, elevated as their position is, they may not trespass with impunity.

Again, gentlemen tell us that a separate supreme court is provided for in this bill, through the legislature. So it is; and that is one of the main reasons why I oppose that bill. I would say to those gentlemen, that just so far as they provide for the organization of our judiciary through the legislature, just so far they approach an absolute despotism. What, sir, is an absolute despotism but a union of the three grand departments of government—to wit: the executive, legislative, and judicial—in one man, or set of men? It is, sir, one of the grand features of our republican institutions, that these powers should be kept entirely separated, and that one may not be dependent upon, or superior to, another. But what is proposed here? To leave the highest court in the hands of the legislature, thus making that court and through that the inferior courts entirely subservient to that body. No, sir, it will not do. This is

one of the duties we are sent here to perform. We are sent here to fix the general principles of our government, and for the very purpose of separating and keeping separate these three grand features in our republican system. We are sent here, sir, to fix the landmarks, to lay the foundation, of a republican government and not a despotism. It is only by keeping these three departments of government entirely separate that the people of this country are so amply secured the blessings of equal laws and impartial justice.

Mr. President, I have already trespassed upon the time and attention of this house too long—longer than I intended when I arose. My excuse is that I feel interested in behalf of the people of the territory in this matter. I feel that gentlemen coming from the north, south, and east have not fully represented their constituents on this subject. I am aware, sir, that gentlemen in the heat of debate are apt to say things they do not mean—are apt to say things which in their sober moments they would disdain to utter. I fear it may be the case here. Now, sir, it is our duty to open and expand our minds and to rise above all such feeling in the great work in which we are engaged. I would ask gentlemen to pause and consider and ask themselves the question—particularly from the north, south, and east—whether this is not the same system which is now in use in this territory. Whether they ever heard the first redeeming word spoken in praise of the present judiciary system. Whether they have not heard it cursed and condemned unqualifiedly by every person they have ever heard speak upon the subject. Whether they have not heard men belonging to this convention make the remark that they never could vote for a constitution which contained the present judiciary system. Whether they have not heard men in this capitol, men high in office in our territorial government, men of influence in this territory, assert boldly that they would feel themselves in duty bound to vote against and oppose any constitution which contained a judiciary system similar to the one now in use in this territory. I would ask the honorable chairman of the committee who introduced this bill if he has not in past time during his judicial labors been compelled to denounce the system as a bad one. In view of all these facts I am surprised to see gentlemen come forward here with all the sangfroid imaginable and support this measure. As I said before, I have occupied your attention too long; but, sir, I have a strong feeling for Wisconsin. I have adopted her as my home. If God should spare my life I expect long

to live within her borders, and my wish is that she may hold out to the world a noble example of a free government; that she may dispense equal justice to all—the rich and the poor, the lame and the blind; "that she may have length of days in her right hand and in her left riches and honor."

Mr. Dunn, in answer to the inquiry of Mr. Lewis and his effort to charge him with inconsistency, said that he had never been in favor of a separate organization of the supreme court. He did not pander to popular views but professed to maintain opinions, and manly opinions, of his own upon all subjects.

Mr. Gale said he was willing to acknowledge that there were differences of opinion in relation to the propriety of having the supreme court judges perform circuit duty, but on a careful examination of the subject he believed that was the best policy. It had been argued by the gentleman from Columbia (Mr. Lewis) as though this was a new and untried experiment; but he assured the gentleman that this was the prevailing system in most of the United States. The nisi prius system, as it is called, is adopted under the laws of the United States, by the New England states and in most of the other states in the Union. This system was in operation in the state of New York until the adoption of their constitution in 1821, when it was changed; but on the revision of their constitution in 1846 it was again revived, and their experience for twenty-five years had satisfied them that this was the most practicable system.

The main objection urged was that the judges might be disposed to exercise a favoritism in sustaining each other's decisions, but he had no fear of that. The judges were selected with reference to legal knowledge and integrity of character, and he thought no one would violate both and publish to the world in the printed reports that he was a fool and a knave. They would have too much pride of character to do that, in his opinion. It was generally supposed that all the business in the supreme court for several years to come would not occupy the time of the supreme court more than four weeks in each year; and he did not believe it was necessary to support three judges at an annual cost of $5,000, expressly to do that amount of business.

In our new state the advantages of a practice in both courts he thought was necessary to school the judges in their complicated duties. They would, while on the circuit, become acquainted with the custom and necessities of the people, the administration of the

law as particularly connected with the facts, and when brought together in the supreme court they would have the opportunity of examining the abstract principles as finally adjudicated and settled as the law of the state. Everyone cannot but see the advantages to be thus derived. The gentleman from Columbia had also argued that under this system our supreme court reports must necessarily become the subject of ridicule with the bar; but Mr. Gale said experience had proved directly the contrary. He would ask the gentleman what reports were held in higher estimation by the bar than those of the Supreme Court of the United States and of Massachusetts, and Johnson's reports of the state of New York. Indeed, it had been asserted on this floor in the last convention by some of the best legal talent in the territory that Johnson's reports of cases decided in New York while under the nisi prius system were decidedly better authorities than those reports of cases in the same state after the adoption of a different system. He would deplore the organization of a supreme court to be composed of men who necessarily would have no practice on the circuits and so small an amount of business as to become rusty bookworms, or else too indolent to discharge any business of importance, and much less the business of the supreme court.

Mr. Kilbourn said there were two particulars in which he would like to see the amendment corrected, if it should be adopted by the convention. One was in regard to the term, which he proposed to amend by striking out six years and inserting nine; striking out four and inserting six; and striking out two and inserting three. The other alteration was to have the election made by the people of the territory at large, and not by single districts. The supreme court represented the whole people. It was, therefore, clear to his mind that they should be elected by the whole people. He would submit that amendment first. Mr. Bishop accepted the amendment.

Mr. Lakin said he was in favor of single districts and thought the arguments which had been adduced in favor of that principle as applied to members of the assembly would apply with peculiar force to judges. If the other principle were applied, all the judges might be selected from one part of the territory, and the other parts would be unacquainted with their merits. Again, in that event many subjects might be brought before them with which they were not acquainted. How would judges elected from Green Bay be able to try causes which involved mining interests? By dividing the

state into districts and electing the judges from them, as was done in Illinois, this difficulty would be obviated. The gentleman from Milwaukee had said that the judges should be elected by general ticket because they would represent the whole state. He denied that position. The judges would not represent any part of the state. They would not be elected to represent particular interests.

Mr. Doran hoped that gentlemen who were friendly to a separate supreme court would allow that question to be tested on its merits in the first place, without encumbering it with amendments. There were gentlemen on the floor who were in favor of a separate supreme court, but who might not be willing to vote for either of the amendments suggested. Mr. Kilbourn accepted the suggestion of Mr. Doran so far as to have the term in the amendment left blank. Mr. Bishop accepted the amendment.

Mr. Whiton made some remarks.

Mr. Martin did not arise with the intention of debating the question. He thought the minds of members were probably made up on the question of a separate supreme court. There was one point, however, which had not been touched upon, to which he wished to call the attention of the convention. The arguments which had been brought forward in support of the nisi prius system were really arguments against the system proposed by the report of the committee, because that system was not in fact the nisi prius system. For in the very same section of the article by which the nisi prius system is established, it is provided that the legislature shall have power to knock that system over and build up a separate supreme court. He wished to see either the one thing or the other determined on; not to have the matter left at loose ends, at the mercy of any legislature that might come here. In times of great party excitement a legislature might be elected composed altogether of one party. That legislature might erect a separate supreme court. The next legislature of an opposite party might pull it down. If the majority desired a nisi prius system, let us have it; if a separate supreme court, so let it be settled.

Mr. Dunn arose simply to correct an error into which he thought Mr. Martin had fallen. It was not to be supposed that the legislature at its very first session would establish a supreme court. The article certainly allowed the legislature to organize a supreme court, but not to destroy the circuit system.

The committee then rose and by their chairman reported progress thereon and asked leave to sit again. Leave was granted.

On motion of Mr. Jackson the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

The convention then resolved itself into committee of the whole for the further consideration of No. 7, article on the judiciary, Mr. King in the chair.

Mr. Doran said: I fully agree, sir, with all the gentlemen who have preceded me as to the importance of the subject now under consideration of the committee, and only regret that I feel called on to take any part in the debate, fully sensible as I am of the very slender resources of which I shall be able to avail myself in the discussion. But when I heard the honorable gentleman from Rock (Mr. Whiton) referring to the beauties and excellencies of the nisi prius system, as known for centuries in England and in this country since the organization of the Supreme Court of the United States, and also in many of the New England states, and attempting to trace any analogy between the judicial organization offered the convention in the article now presented to the committee for deliberation and the English nisi prius system, I felt it to rest on me as an imperative duty to show that no such analogy existed; and that in fact no analogy ever did exist even between the organization of the Supreme Court of the United States and the English nisi prius system; although I have no doubt it was intended to model that court after the English plan.

Before entering on this branch of the subject, however, I wish, sir, to direct the attention of the committee to a fact which gives a weight, an influence, and an importance to this report of the judiciary committee, to which it is not in my mind entitled. It will be recollected that in the early part of the session, when my honorable colleague (Mr. Kilbourn) in order to expedite business proposed to have the convention instruct the several committees on certain points, it was objected to on the ground, principally, as stated by the honorable gentleman from Dodge (Mr. Judd), that those several committees had been selected with great care and composed each of gentlemen from different parts of the territory, in order to reflect through them the opinion of the people of the territory on the different subjects submitted to them. But instead

of the fact being as stated by the honorable gentleman from Dodge on that occasion, I find that this important committee was drawn exclusively from the southern tier of counties: from Racine, Walworth, Rock, and Lafayette—and two of the five from that favored county, Racine. I am willing to admit, sir, all that may be claimed of qualification for those five honorable gentlemen by way of legal or other attainments; and further, that they are very competent to draw up a judicial system for any state of this Union or for any country; but I am not prepared to admit that they fairly represent the opinion of the territory generally on this important subject of a separate supreme court. I undertake to say that five members could not be drawn from different parts of the territory who would have concurred in such a report. Look, for instance, at the counties immediately west and northwest of Lafayette, and you find the legal gentlemen from those counties opposed to the plan submitted; so all round in that direction. Come back to the east of this southern tier, and you find the same opposition. The legal gentleman from Washington County (Mr. Turner) opposed the plan of the committee, as does also the gentleman from Columbia (Mr. Lewis). Hence it is that the opinion expressed in this report is entirely sectional.

The judiciary committee already wield too much of an influence from certain other extraneous circumstances, without permitting the belief that they represented the opinion of the people of different parts of the territory, when such was not the case. Quite enough of influence is it that they have at their head, as chairman, the chief justice of the supreme court of the territory, with the many advantages of long experience and varied resources which the friends of that honorable gentleman claim for him, surrounded as he is by the other luminaries of the committee, and all collected into this one bright and burning focus. For my part, sir, I feel too keenly the fearful odds with which the opponents of this measure have to contend at best, without allowing those who unfortunately want to fasten this system on the country the slightest advantage. True, the judiciary committee have the advantages of concert of action, of long, elaborate, and mature investigation, while those who are in the opposition approach the subject with defective information, and in such a manner as is well calculated to inspire anything but a sanguine hope of success. All this I will admit; but

I cannot admit that five honorable gentlemen from the four counties named represent the opinion of the territory.

The honorable gentleman from Lafayette, who first addressed the committee in favor of the reported article, did not tell us what this nisi meant, that he said he so much preferred; nor the reason of his preference, further than that it would save expense; nor did the honorable gentleman from Rock go far into details, although he dealt largely in general assertions. Now, sir, I make bold to say that there is little analogy between the system offered us in this report and the Supreme Court of the United States; and that between the Supreme Court of the United States and the English nisi prius system there is no analogy whatever. And I shall undertake further to show that the Supreme Court of the United States was originally organized by the law of 1789 on a false analogy, and on an ill-judged plan, which now unfortunately seems to determine the judiciary committee who offer us this system. Nay, it has even been well said and ably maintained—although there never could be a judicial decision on the point—that it was contrary to the meaning of the spirit and letter of the Constitution of the United States for the judges of the Supreme Court to be the judges of the inferior courts authorized by the Constitution. I know it may be urged that many of the framers of the Constitution were in Congress when the judiciary act of 1789 was passed, and to this I am willing to give great weight; but it proves too much, and in legal parlance therefore proves nothing. Because the Supreme Court have long since decided in the celebrated case of *Marbury* v. *Madison,* when secretary of state, that the thirteenth section of that act was unconstitutional; and if one part could be unconstitutional, another might. And in support of the constitutionality ["unconstitutionality" in Madison *Tri-Weekly Express,* Jan. 25, 1848] of that part of the law which allowed the judges of the Supreme Court to be the judges of the inferior courts, I need only refer to the undeviating opinion of Judge Parsons—the ever-memorable Theophilus Parsons—who while at the bar and when on the bench had but one opinion on the subject; and this opinion he was understood to have retained to the day of his death. Indeed nothing but the absolute necessity of the occasion—an impoverished treasury—could justify or tolerate the idea of a judge, the component part of a superior court, coming down and adjudicating on a case in an inferior court and again ascending the bench of the superior court

to review the same case and the decision given below. Sir, it is a system not only unfriendly to justice but absolutely repugnant to its fair and pure administration—a system such as cannot be found on any other part of the globe—much less in England. Yet gentlemen on the other side claim for it the perfections of the English system without any, the slightest, analogy, as I shall show. But that system, bad as it is, has not been offered us in the report. We are to have district judges, elected in districts, ascend to compose the supreme court; while by that above alluded to of the Supreme Court of the United States, the Supreme Court judges came down and scattered themselves to hold the circuit courts, with original jurisdiction therein and appellate jurisdiction from the district courts of the United States. Perhaps it might be asked: Have not the decisions of the Supreme Court of the United States given general satisfaction? Admitting this to be true for argument's sake (although I deny the fact and will prove, before I get through, that such is not the case), yet the merit has not been due to the system, but to the judges in spite of the system. And here again the analogy between the proposed system and even the Supreme Court fails; in the latter case the judges were appointed for life, after a most careful selection; in the former they are to be picked up from the districts and elected for the term of five years, a term little if any too long for an important electioneering campaign. The old New York nisi system before the change in the constitution of 1821, I am free to admit, worked well; but it approximated closely the English nisi system; and with the counterpoise or check of a court of errors such as then regulated the New York system, I would not object to the plan reported. But without such, it is an experiment too dangerous to contemplate.

I would now, sir, beg to direct the attention of the committee for a few moments to the number and organization of the English courts, in order to explain what this mysterious nisi system actually is, and to disprove the analogy claimed by the gentleman from Rock between the mongrel system now offered us and that which prevails in England. The English common law courts of general jurisdiction are three, and are presided over by four judges in each. These courts are designated as the Court of Common Pleas, of Exchequer, and King's Bench, with the superintending court of Exchequer Chamber, which is presided over by the twelve judges and the Lord High Chancellor, and occasionally the Lord Treasurer.

All civil suits tried at nisi prius are first commenced in one or other of the three courts that I have first named, in Westminster Hall, and the record, when completed there, is delivered to some one of the judges indiscriminately, who, with a judge for the criminal side, runs into every county in the kingdom twice in each year, and holds what are called courts of assize, or nisi prius. But this judge, on the civil side, taking with him the record complete from one of the courts of Westminster, has nothing whatever to do but try the question of fact, by the aid of a jury, on pleadings already settled, in the court from which the record proceeds. He gives no final judgment, nor does he even make any interlocutory order touching the cause. The trial being thus had, the record with the verdict and judge's notes is taken back to Westminster Hall, so that whether the judge who presided at this court of assize be one of the judges who is to preside on the final examination of the case in Westminster Hall is a matter of perfect indifference, inasmuch as he has rendered no judgment, nor could he imbibe the slightest "pride of opinion," so baneful to the true administration of justice under the so-called nisi system as generally known in this country. And of this record so brought back, judgment is entered after an unbiased revision of the four judges. But this judgement, if rendered in either the Common Pleas or Exchequer, may be taken on error into the court of King's Bench; and thence again into the Exchequer Chamber, before the twelve judges and the Lord Chancellor; and even thence again to the House of Lords. So that from two of the courts there are three appellate tribunals, and from the court of King's Bench there are two. Now, I will ask if there is any analogy, if there can be any analogy traced, between the organization of the Supreme Court of the United States and the English courts as regards trials at nisi prius. Hence it follows that notwithstanding gentlemen desire to liken the proposed organization to that of the Supreme Court of the United States, even though it were so, it is obnoxious to all the objections to which a court of last resort, presided over even in part by a judge who adjudicated below, is subject. And before I go into an examination of some of those many palpable objections, I propose as briefly as possible to show the committee that the experienced and intelligent of the country have from time to time been endeavoring to shake off the nisi prius

system as engrafted on the Supreme Court of the United States, and that at one time they succeeded.

Soon after the passage of the judiciary law of 1789 it was found to be very objectionable; but the principal defect at first discovered consisted in the delays and disappointments occasioned by the judges (who had each to attend a circuit twice every year) not being able to traverse the vast extent of country assigned them. The states then in the Union were divided into six circuits, and two judges were assigned each circuit; but they were to "rotate" also—another objectionable feature in the original law, from which the late convention took the hint, but without any of the reasons that operated on the legislators of 1789. The rules of property and the practice being then, as now, very different in the several states, it was considered necessary to run the judges into them on circuit duty, in order to make them familiar with the laws, usages, and different modes of practice in those several states and territories. But practically this system had an effect the very contrary of what was looked for. It not only failed to establish a uniformity of practice in the different circuits, but no uniformity could be maintained in any one circuit. The lawyers of the eastern, middle, and southern states, from among whom the judges should necessarily be selected, having been educated in different schools, could not divest themselves of the prejudices thus early inculcated; and had they, when called to the bench, attempted severally to forget the accustomed rules of property and practice, they would have had no law at hand to support any one decision. Thus they resolved to stand by the decisions they knew and were conversant with, rather than look for the law or usage of the circuit into which they were compelled to travel. Doubtless there was uniformity in the decisions of the same judge, but as the same one seldom came twice successively over the same circuit, and occasionally not till after an interval of some two or three years, his opinions were forgotten or reversed before he returned. Hence the successive terms of those circuit courts established decisions and rules of practice as different from each other as is the South from the East, and consequently left the courts in a perpetual state of fluctuation. No system of practice could grow up; no certainty of rule could be established. The seeds sown in one term could scarcely vegetate before they were trodden down. The opinion of a former judge was no precedent to his successor, each considering himself bound to follow the light of

his own understanding; and to such an extent was this carried that decisions of judges were so frequently reversed and so many interlocutory and other orders given during the progress of the suit by the different judges, that when the case would come before the Supreme Court there could not be found more than one judge competent to adjudicate; all the other five having from time to time sat on some part of the case in the court below.

I should not at this time dwell so minutely on the defects of this "rotary" system, but that I find some gentlemen in favor of the judiciary article in the late constitution, as also because I am informed there is a kind of compromise system about to be offered to the convention, and therefore, sir, that no time is lost in thus glancing at some of the many defects of the rotary system. And although the compromise amendment provides only, as I am informed, for allowing or rather compelling the supreme court judges to hold circuit courts in the same circuit, still it is open to most of the objections applicable to the case I have before stated.

But to return for a moment to the model nisi prius system. In 1792 the judges of the Supreme Court, tired out with the complaints as well as with the continued traveling, memorialized the President, requesting him to suggest to Congress the propriety of a change in this branch of the law of 1789. The change was suggested, and the evil remedied in a way, too, sufficiently awkward and curious, and the more so as an evil still more objectionable was created. Instead of two judges going circuit together, the law of 1793 provided for only one, and the district judge to act as associate. But whenever a case would come before the court that the district judge had adjudicated, he had to stand aside; and whenever he disagreed in opinion with the circuit judge, the case was to be referred to the Supreme Court. Allusion to this defect would be unnecessary here for any purpose except to point out the difficulty of getting right after a wrong start, and the caution necessary to guard against such evils.

But, sir, during all this time and continuously up to 1801 the voice of the people was being heard by petition and remonstrance against this much lauded nisi system, till in that year, after great and mature deliberation, an act was passed, in this last year of the administration of the elder Adams, establishing a separate Supreme Court. Thus nearly twelve years rolled round before a change could be effected in the pernicious and blighting system established under

the law of 1789—a system, however, very superior in many respects to that offered us by the judiciary committee. The judiciary system established by the law of 1801 was moulded by the ablest jurists and statesmen that ever adorned any country in any age, and perhaps approached as closely to a perfect one as could be expected. But, alas! The ruthless vandal hand of party was soon to be employed in demolishing this beautiful structure of human ingenuity, in maturing which the best talent of the day had been wisely expended. But even while the destroyer's hand was at work, no one ventured the assertion that there ought not to be a separate court. No, the pretext was economy; other motives, however, have been assigned by the impartial historian for this unhallowed deed. And strange enough, too, here the same reason, economy, is assigned for compelling us to adopt the nisi system which the twelve years' trial up to that time had condemned. In 1802 the country was partially drawn back to the old system by the repeal of the law of 1801, to which I have alluded. And some of the best friends of Mr. Jefferson's administration have never forgiven or forgotten the manner in which that law was repealed, or the extraordinary statements which accompanied the message in relation to this subject. However, it was repealed; but in 1819 the Senate of the United States passed a bill providing for a separate Supreme Court, and nearly in the words of the statute of 1801, thus proving that public opinion was all the while working for this great principle. The House of Representatives unfortunately had not time to act on the bill that year; and circumstances which I shall explain satisfactorily have prevented further action thereon ever since.

About this time the decision of the Supreme Court in the celebrated Olmstead case in Pennsylvania and the decisions of the same tribunal relative to the occupying claimant laws of Kentucky gave great dissatisfaction to the western states—so much so that Pennsylvania solicited the aid of Virginia to resist the decision, while Kentucky, though no less chagrined, turned her battery in another and a more effectual direction. This was to increase the number of judges on the Supreme Bench so that the western states might have a proportionate representation there, as in Congress. This agitation was kept up for several years, till finally the judiciary law of 1826 increased the number of judges to ten—another instance of the effect of perseverance. But it is worthy of our best attention that for the many years during which the western states

were knocking at the door of Congress for what they called justice, in consequence of the decisions I before referred to, all this time the ablest men of the Democratic party, from Mr. Van Buren downwards, were expressing doubts of the expediency of increasing the numerical strength of the Supreme Court and urging the necessity of recurring to the law of 1801: a law matured under the administration, as I said, of the elder Adams and repealed soon after the accession of Mr. Jefferson to the presidential chair. Now, I contend, sir, that no greater proof can be given of the merits of this law of 1801, establishing a separate Supreme Court, and of the great principle therein contained, than that it was enacted in the palmiest days, although near the downfall, of the great Federal party, as known from 1790 to 1801, and again partially adopted in 1819, and referred to by the great Democratic party during the struggles of the western states for an accession to the Supreme Court, as a model worth returning to and worth adopting. True, the western states prevailed, but this does not affect the principle; and if the northwestern states recently admitted and about to be admitted into the Union should ever find occasion to clamor for representation in the Supreme Court, as did Kentucky and the other western states, aided by Georgia at the south, about the time I allude to, great danger may be apprehended from too great an enlargement of that tribunal. Thus it is that this system, first adopted by mistake, by a false analogy, and according to the authorities of the debates in the Virginian and Massachusetts conventions, on the authority of the writers of the *Federalist,* and last, not least, on the authority of the never-to-be-forgotten Theophilus Parsons—*clarum et venerabile nomen*—in direct violation of the Constitution, and practically intolerable, has ever since been fastened upon the country and is now quoted as a reason why we should adopt a similar system. I should rather have expected to find the honorable gentleman from Rock (Mr. Whiton) fighting in opposition to instead of extolling the merits of this mongrel organization, and thus carrying out the views of the great men of his party, at the period I refer to.

I will now refer to another argument—and that, too, the most paltry one—used by the judiciary committee in support of their plan. They say they are anxious to keep down the expense of judicial and other officers; that they don't like to see officers fed at the public crib and having nothing to do; and that if you establish

a separate supreme court the judges instead of mixing in the world like other men will become as monks, leading an ascetic life and getting rusty in their profession. The plan proposed by the advocates of a separate supreme court contemplates very little additional expense. I would reduce the circuit judges to four and allow three for the supreme bench. This would be an increase of only two, and by a calculation I ascertain that to the present population, allowing one-half for minors and females, this would be an expense of only five cents a head. But there are many who consider that three circuit judges could do the business for the next five years, and I am one of the number who entertain that opinion. For of the 214,000 population now in the territory, 114,000 of that number are embraced in the third judicial district, of which the Hon. A. G. Miller is judge; and I don't see that he is any overworked.

It is true, sir, quite true, as I believe, that there has not been much business in the supreme court of this territory; nor do I believe there ever will be under the present or proposed system. The people have no confidence in that court as now organized—nay, I am bold to say that they entertain a strong prejudice against the present organization of that court; and I know of many who would sooner submit to what they would consider an unjust and illegal judgment or decision than have recourse to that court for redress of a real or imaginary wrong. And permit me to add that in my opinion it is of as much, or nearly as much, importance that the public should be satisfied that justice was purely and fairly administered, as to have it so administered and they to think it were not so. Let the public lose confidence in the purity of your appellate court, and few will resort there. As to judges becoming rusty unless kept on the tramp from circuit to circuit, I can only reply that the honorable gentleman from Rock who raises that objection seems to have forgotten the maxim of my Lord Coke who always urged the "*lucubrationes viginti amorum*" as a necessary, an indispensable qualification for even a puisne judge; so that on this principle we should require ten additional years of study and preparation in and out of court, for a judge of our supreme court. And if so it would be incompatible to expect such a man to possess the qualifications of post-boy and judge at the same time. For my part, sir, I should much prefer seeing a judge of the supreme court in the state library tracing the analogies of law, than hunting after the forms and practice to be found in the inferior courts. But, *de*

gustibus nil disputandum. For myself, when the difference of the expense is so very trifling, I must say I should much prefer a court without business, to business without the court.

I shall now, sir, suppose this supreme court to be organized agreeably to the plan suggested by the judiciary committee; and, further, I will suppose a suitor who knows nothing of the organization of the court to have carried a cause there by appeal. What, I ask you, do you believe will be the feelings of that suitor when he will have seen on the supreme bench the judge who decided against him in the court below? Will he not stare with astonishment and immediately ask his attorney how this had happened? He will be told that it is a constitutional arrangement and can't be obviated. In ninety-nine cases out of a hundred I do believe a man so circumstanced would feel disposed to get out of that court as soon as he could, little caring about a decision; and, further, that in many cases parties knowing the organization of the court would not go there on appeal no matter how much aggrieved. It may be said that the judge who decided below does not give his voice in the decision above; but can it be denied that he brings on the bench his pride of opinion—his influence, personal and political—and perhaps a prejudice personally and politically—and that he receives, as he is entitled to receive, on the fairest principles of reciprocity from all his associates, a respectful deference for his opinion? For, having tried the case once, he will be presumed to know more in relation to its real merits than those who have previously known nothing about it. What, may I ask, sir, do these several circuit judges meet for? Is it not for the correction of mutual errors, and will not their meetings as certainly tend to the confirmation of mutual opinion? This doubtless will be the inevitable consequence. And indeed I could scarcely suppress a smile when I heard the honorable gentleman from Lafayette (Mr. Dunn) with such genuine simplicity tell us how courteously and with what anxiety judges court a revision and correction of their decisions from their brother judges and that such was the general practice. I have no doubt courtesies are reciprocated in such cases, but in quite a different way. The favor that A asks of B, B asks of C, and thus it is that this courtly courtesy, which I believe does and will run through the bench in such cases, will destroy the even current of justice. I once saw a case of this kind, and a gentleman assured me he would rather than have a thousand dollars see the judge that tried his case below off

the bench during the trial above, although he said he had a high opinion of that judge's integrity and impartiality. But he considered a judge could not get over his pride of opinion under such circumstances. But under our elective system and the short terms that will almost inevitably accompany that system the hope of an impartial decision will be diminished by many degrees.

On what ground, sir, will a judge rely with most confidence for reëlection? Why, on the ground that his decisions have been confirmed in the supreme court. Every reversal will operate as a disqualification or indirect proof of a want of the proper qualifications. Will not the judge, then, whose subsistence depends on his office, do everything, *fas et nefas,* to prove himself worthy of reëlection? And consequently he will use his influence with his associate judges to prevent a reversal of his decisions and most courteously reciprocate the opportunity of serving, and so on through the entire court, all of which in the wide range of legal arbitrament can be done effectually and imperceptibly. Will not a judge, sir, while he is examining the sentence of a brother today remember that that brother will sit in judgment upon his proceedings tomorrow? Are the judges of a court thus constituted free from all motives, exempt from all bias, which could even remotely influence opinion on the point of strict right? And yet let me ask emphatically whether this court, being the court of final resort, should not be so constituted that the world should believe and every suitor be satisfied that in weighing the justice of a cause nothing entered the scales but its true merits. Political institutions should be so calculated as not to depend upon the virtues but to guard against the vices and weaknesses of men. It is possible that a judge of the supreme court would not be influenced by the esprit de corps and that he would neither be gratified by the affirmance nor mortified by the reversal of his opinions; but, sir, this is estimating the strength and purity of human nature upon a possible but not on its ordinary scale. For myself, I do not hesitate to express the opinion that I would as soon expect the wolf to herd with the lamb, or the eagle to perch with the dove, as to look for a pure administration of justice under such an organization and flowing from such a source, surrounded by the circumstances I have anticipated, and which must inevitably follow. However, in this matter, for one, I feel that I have discharged my duty. And in apology for the length of time that I have trespassed

on the indulgence of the committee, allow me to say that I should not have detained them so long had I not been instructed on this point by several of my constituents in whose opinions I fully concur. Sir, I have only to thank the committee for the patience with which they have heard me.

(During the delivery of this speech the convention took a recess for dinner, Mr. Lovell having suggested to Mr. Doran that he give way for that purpose, but in order to preserve the connection this interruption is not noticed in place.)

Mr. Gale offered an amendment to section 4, to the effect that no judge who had decided a cause in an inferior court should participate in the decision of the same in the supreme court. The amendment was lost.

The question then being upon the amendment of the gentleman from Iowa County, Mr. Bishop said he had listened with great pleasure to the able arguments which had been brought forward on both sides. He had offered the amendment to carry out the wishes of his constituents and to obtain a fair expression of the views of the convention upon the propriety of establishing a separate supreme court. It would be seen that the amendment was in blank and presented that question merely.

Mr. Chase said he had thought that it would be proper to leave this question as far as the argument was concerned wholly to the gentlemen of the bar, and that the farmers and mechanics in the convention should act as a jury after hearing both sides. He would speak, however, of one or two points made by the gentleman from Milwaukee (Mr. Doran). He had been struck with the letter he had read from one of his constituents and what he had declared to be his experience. If he was not mistaken the author of the letter, like the gentleman himself, was one of those who had no interest in the law for themselves and never engaged in it except as an attorney for others. That letter and the gentleman himself said that if the system recommended by the committee were adopted, there would be little or no business in the supreme court. Then let us adopt the system, by all means.

Mr. Doran (interrupting) said the gentleman must have misunderstood him. He had said there would be little or no business because however much suitors might be aggrieved by the decisions of the courts below, having no confidence in the integrity of the su-

preme court they would generally prefer to submit to injustice rather than appeal to such a tribunal.

Mr. Chase said he had so understood the gentleman; and he would repeat, let us adopt that system, for the records of the courts in every county in the territory showed that the costs of the suits exceeded in the aggregate the whole amount collected. Then the less litigation the better, both for the suitor and for the people who had to pay the expenses of the courts. This was a conclusive reason for him to support the system recommended by the committee. It was argued also that unless a separate supreme court were organized now, it never would be. But it would be in the power of the people at any time to establish this separate court, and if they did not, it would be a conclusive evidence that it was not needed. One argument only in favor of a separate supreme court had had any weight with him—and he did not now attach much to that. It was that the nisi prius system would lead to corruption in the judges themselves; that it would place them under a temptation to support one another in their errors. He thought that the regard of the judges for their reputation as jurists would be a stronger motive than their personal pride of opinion, and that consequently not much danger was to be apprehended from that source.

Mr. Doran, in reference to the corruption of judges, said he had full confidence in the present bench, but his objection to the system proposed was that it would place temptations to corruption before them, whereas it should be an object to remove them as far as possible. It was an old and true saying that no man could know how he would act in circumstances in which he had never been placed. And no judge, however honest when there was no temptation to be otherwise, could be sure he would not give way a little when his pride and interest were arrayed against him to that end.

Mr. Lakin had not intended to speak upon the question at all. He had been inclined to prefer a separate supreme court and he was then, more than ever, convinced of its importance. The gentleman from Fond du Lac thought they had better have no courts at all or, at any rate, no laws for the collection of debts, which would amount pretty nearly to the same thing. The gentleman thought the less inducement there was for carrying up cases to the supreme court, the better. That gentleman might see the time when he would have a case to carry up to the supreme court, and perhaps

his farm, or his liberty, or his life might be at stake and depending upon the integrity and ability of the supreme court.

A separate supreme bench had been objected to on the ground of the expense—it was called an expensive system. So was fire insurance an expensive affair, especially if the house never chanced to burn up. A separate supreme court might be expensive to the country, but not to the individual who might chance to need it for the preservation of his rights. He thought gentlemen set too high an estimate upon human nature when they assumed the incorruptibility of judges. He had read of judges who were remarkable for their talents and learning, and at the same time exceedingly corrupt, and he did not know of any reason why judges were not as liable to be influenced by bad motives as any other men. He would appeal to the experience of the legal profession whether a change of venue was ever granted by a judge in perfect good humor, where the ground of the change related to himself. He had never known of an instance; but, on the contrary, it was always granted with reluctance and much of ill feeling.

In cases of appeal to the supreme court, the judge who decided the case below could not but feel a deep interest in the action of the higher court upon his decisions. It was natural that he should. No man wished to have his errors exposed, and if the supreme bench was filled by circuit judges they would all be similarly situated and could not but sympathize with one another. He had read reports of cases in courts thus constituted, in which the judge who decided the case below stuck to his decision with the tenacity of death in the court above, when not a reason was given in support of his decision, because there was no reason which could be given.

It had been said that the system reported by the committee was tolerable—bearable. So it was tolerable, or bearable (he preferred the latter word), but a separate and independent supreme court would be far better.

Mr. Kilbourn said the object then in view, as he supposed, was to test the sense of the convention upon the question whether there should be a separate supreme court or not; but the question could not be tested by the proposition as it then stood, it being coupled with another, viz., whether, if they were to have a separate supreme bench, the judges should be chosen by general ticket or by single districts. Some might be in favor of a separate supreme bench and opposed to the proposed method of electing the judges in case they

were to be chosen at all. He would therefore, with the leave of the convention and of the gentleman who first moved the amendment, withdraw that part of it which had been suggested by himself relating to single districts. Leave was granted and that part of the proposition was withdrawn.

The question was then taken upon the original motion and decided in the negative, 24 to 31.

Mr. Sanders moved to amend the second section by adding after the words "justices of the peace" the words "supreme court commissioners." The amendment was rejected.

Mr. Sanders then moved to amend so as to give the legislature power to provide for the appointment of one or more persons in each county to perform the duties of judge at chambers. He hoped the amendment would not be voted down without due consideration. It seemed to be absolutely necessary to have some officer in each county authorized to do such business. Mr. Dunn thought this amendment would be entirely useless without the one which had just been rejected, for it would not reach the object intended. The question of providing for such an officer did not arise in the committee on the judiciary; but if gentlemen deemed it necessary, he had no objections to it.

The vote by which the first amendment offered by Mr. Sanders was rejected was reconsidered.

Mr. Dunn would say a word in regard to the necessity of this amendment, if the object contemplated by it was desired. The section provided that the judicial power should be vested in a supreme court, district courts, judges of probate, and justices of the peace, and if vested in them alone, the legislature could not vest judicial powers in any other officers. Without the amendment, the same question would arise as had arisen under the organic law of the territory which vested the judicial power in certain officers. The legislature had provided for the appointment of supreme court commissioners, while under the organic law they could perform no judicial act. The same difficulty would occur under the constitution, unless the judicial power was in part vested in such officers.

Mr. Estabrook was opposed to having any such officer. They had once had such an officer and the legislature, no doubt for good reasons, had abolished that office and conferred the powers upon judges of probate, and he thought they would be the most proper officers to be entrusted with such duties, under the constitution.

Mr. Sanders said there were other reasons than the uselessness of the officer why the legislature had abolished the office of supreme court commissioner. Those officers were appointed by the governor, and it would be recollected that at the time we had a governor who was very unpopular with the legislature, and the great object was to knock the sand from under him. They had imposed the duties on judges of probate, but no one was willing to entrust them with any business of importance, and consequently there was practically no officer to transact such business. Mr. Sanders illustrated by several supposed cases the necessity of having some officer to do the business of a judge at chambers.

Mr. Estabrook thought if they were to have such an officer his powers and duties should be defined and limited. He did not know what was meant by a supreme court commissioner—whether he was to act as the agent of the supreme court or of some other. If the object was to confer on him the powers of a judge at chambers, he thought all necessary powers of the kind might be conferred upon judges of probate in accordance with the fourth section of the article.

The question was again taken on the amendment, and it was rejected.

Mr. Kilbourn moved so to amend as to require four of the five district judges to constitute a quorum to do business, and a majority to decide a case. He had called attention to this subject yesterday, but it was not then convenient to offer the amendment. As the article then stood, three would constitute a quorum and two would decide a case. He thought a majority of the court should be necessary to decide a case. Mr. Whiton called the attention of the mover to a difficulty involved in the amendment. Mr. Kilbourn thought he had comprehended the full effect of the amendment. It was true that if the court were divided two and two, the case could not be decided, and until it was decided the judgment of the court below would have to stand; but such a division of the court would be evidence that the case was a very doubtful one and that probably the judgment of the court below ought to stand. The amendment was adopted, 24 to 18.

Mr. Doran moved to amend so that in case the legislature should establish a separate supreme court they should have power to reduce the number of district judges to four, which was agreed to.

Mr. Reymert moved to amend so that in case the legislature should establish a separate supreme court the judges thereof should be elected by single districts, which was disagreed to.

Mr. Kilbourn moved so to amend that the disqualification of a judge from being elected to any other office should not apply to a judicial office. His object was to leave the restriction so that a judge of the district court might be elected a judge of the supreme court. The amendment was adopted.

Mr. Reymert moved an amendment that the legislature should have power to establish courts of conciliation. The amendment was adopted.

Mr. Doran moved to amend the fourteenth section by striking out the word "shall" and inserting the word "may," so as to leave the question of imposing a tax on suits brought into court optional with the legislature, which was agreed to.

Mr. Kinne moved to strike out the fourteenth section. He believed it was wrong to impose a tax on suitors in court. He thought it was a duty which the state owed to its citizens to provide the means of justice free of any tax. They had declared in the bill of rights that every man ought to find in the courts a sure and speedy remedy for all aggrievances. If the citizen was entitled to a remedy, speedy and sure, in the courts, why should it not be free? It appeared to him inconsistent to declare that the citizen ought to find a sure and speedy remedy in the courts for all wrongs done him, and then impose a fine for coming into court at all. It was a part of the civil compact that the individual citizen would not attempt to judge and avenge his own wrongs, but would submit to the adjudications of the courts; and as this arrangement was for the mutual benefit of all, the expenses of maintaining this department of the government should be entirely a public charge. It was not those who resorted to courts, alone, who were benefited. The judicial department was a guard upon the rights of all, and by redressing the wrongs done to some prevented wrongs being done to others, and he could see no more reason why a man should be fined for resorting to the courts, than why he should be imprisoned for the same thing.

Mr. Dunn thought there was a misapprehension as to the object of the section. The object was to raise a fund to help defray the expenses of the judicial system. It was no uncommon thing in the states, and there was really nothing wrong about it. No man could approach a court without costs, and the same arguments used

against imposing a tax on suitors would apply with equal force against requiring them to pay the fees of clerks, sheriffs, and jurors. If there was any hardship about it, it would fall upon the man who had refused to do justice until brought into court and compelled by due course of law; and the object of the tax would be merely to reimburse the public from the pocket of him who had rendered the expense necessary by his own wrong.

Mr. Whiton spoke against the amendment.

The question was then taken and the amendment rejected.

Mr. Martin moved to amend by striking out several sections and inserting several others providing for a separate supreme court.

Pending the question thereon, the committee rose and by their chairman reported progress thereon and asked leave to sit again. Leave was granted.

On motion of Mr. Fagan the convention adjourned.

FRIDAY, JANUARY 21, 1848

Prayer by the Rev. Mr. Read.

The journal of yesterday was read and corrected.

Mr. Scagel asked leave of absence for Mr. Lewis. Leave was granted.

Mr. Kinne presented a petition from sundry inhabitants of Dane County, relative to submitting the old constitution to a vote of the people. Mr. Dunn moved that the same be laid upon the table, which was agreed to.

Resolutions were introduced and read as follows, to wit:

By Mr. Case: "*Resolved*, That the committee on revision and arrangement are hereby instructed to inquire into the expediency of amending the article on legislative, by adding thereto a section requiring the first legislature of this state to meet in joint ballot on the first Monday of the session and ballot for United States Senators, and if they fail to elect such Senators on that day, they shall meet again on the succeeding Wednesday and ballot as above provided until they shall elect such Senators."

By Mr. Biggs: "WHEREAS, By the ordinance of Congress for the government of the territory northwest of the river Ohio, passed July 13, 1787, the following article of compact between the original states and the people and states in the aforesaid territory was ordained and declared to be forever unalterable, unless by common consent, to wit: 'There shall be formed in said territory not less than three nor [more] than five states. If more than three states shall be formed, the one or two states so formed shall be in that part of said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted by its delegates into the Congress of the United States on an equal footing with the original states and shall be at liberty to form a permanent constitution and state government: *Provided*, the constitution and [state] government so formed shall be republican.' And WHEREAS, In conformity with the ordinance of Congress and article of compact above mentioned four states have been admitted by Congress into the Union on an equal footing with the original states; therefore it is *Resolved*, That the territory of Wisconsin, being the fifth and only remaining [state] to be formed in said Northwestern Territory, has a right, having formed a republican constitution, to demand admission into the Union with such boundaries as the ordinance and article of compact above mentioned have granted ["guaranteed" in MS] to her. And that so much of the act of Congress entitled 'An Act to enable the people of Wisconsin territory to form a constitution and state government and for the admission of such state into the Union' as relates to the boundaries of said state is null and void and in violation of the above-mentioned article of compact."

By Mr. Dunn: "*Resolved*, That a committee of three be appointed by the President to ascertain and report the expenses of the commission issued by the committee of this convention, raised on the contest of the seat of the Hon. John O'Connor of Lafayette County, by William S. Hamilton of the same county. And also to inquire into the expenses incurred therein by the sitting member and report the amount which in their opinion he is reasonably entitled to receive therefor."

Mr. Dunn moved that the fifth rule be suspended for the adoption of said resolution now, which was agreed to. The said resolution was then adopted.

Mr. Fenton introduced the following resolution, to wit: "*Resolved*, That the use of this hall be tendered to the Rev. John Penman on next Sabbath for divine service."

Resolution No. 1 of yesterday was then taken up, when Mr. Lakin moved to amend the same by striking out the words "for and during the session" and inserting "from the commencement of the session to the time when the contested case was decided"; which was accepted by Mr. Fenton as a modification of his resolution.

Mr. Chase did not know under what head the convention could audit the proposed expenditure if the resolution should pass. It certainly struck him that it could not be accounted among incidental expenses; and if it was regarded as coming under the head of pay of members, they would have the same right to pay themselves five dollars a day as to vote per diem to a person who was not a member. He considered that the legislature was the proper body, if any, to vote an appropriation for this purpose. Mr. Beall spoke in favor of the resolution. Mr. Chase had nothing to say about the justice of the case here. That was a matter for the legislature to decide on. It was not competent for the convention to appropriate money to themselves or to any persons they might choose to regard as members. Mr. Judd thought that this would clearly come under the head of incidental expenses. Mr. Doran said that the question arose whether the convention had any right to act in the matter or whether the legislature possessed this right. It seemed to him that the suggestion of the gentleman from Fond du Lac was illustrative of his happy way of getting aside a question by factious propositions. His opinion was that the legislature had nothing to do with the matter. It was not a case to be decided between the contestant and the sitting member, but one of right and justice on the part of the convention.

The resolution as amended was then adopted. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 34, negative 25; for the vote see Appendix I, roll call 147].

Resolution No. 2, introduced by Mr. Vanderpoel yesterday, was then taken up.

Mr. Vanderpoel said that having introduced the resolution it was proper he should state his reasons for having done so. He thought that where the public servants had public property in their

hands to distribute, there ought to be a full explanation of the manner in which it was distributed. A committee having been appointed to make the proper inquiries, and their report not being satisfactory to the members of the convention, he thought that it was now necessary that a statement of stationery furnished should be made, and if it proved satisfactory, all was right. It was the duty of members to ascertain where the money had gone. That matter was now involved in mystery. As regarded the fact that the superintendent had scattered on the desk of the members that morning a small supply of stationery, he was reminded of the observation of Judge Hale of England, who had on a certain occasion said he was not inclined to go in for bribery because he had not received his share.

Mr. Chase opposed the resolution on the ground that, if it were adopted, the effect might be to bring to the desks of members more stationery such as they had already received, which was utterly worthless, and they were better off without any of it. Let the matter go before the legislature, to whom the superintendent was responsible. If he could not satisfy that body it would hold him to account.

Mr. Sanders thought the resolution ought to be adopted for the purpose of ascertaining and laying before the convention the manner in which the $220 recently appropriated had been applied.

Mr. Harvey said the question was whether the convention should have the full amount of the $690 which had been appropriated by the legislature to supply them with stationery, or whether they should suffer the superintendent to charge a great part of it to incidental expenses, the benefit of which they had not received. The members of the convention were not satisfied with the manner in which the outlay had been made and wanted a plain, straightforward account. If the superintendent had acted fairly in the premises, it was for his advantage as well as theirs that it should be known.

Mr. Jackson moved to lay the resolution upon the table, which was disagreed to. And the question having been put on the adoption of the same, it was decided in the affirmative.

The convention then resolved itself into committee of the whole for the further consideration of No. 7, article on the judiciary, Mr. King in the chair.

The question being on the amendment offered by Mr. Martin in committee of the whole yesterday afternoon, a division was called for and the amendment disagreed to, 19 to 19.

Mr. Martin then moved to amend the article by striking out so much of the fifth section as provided for authorizing the legislature to organize a separate supreme court.

Mr. Dunn said that this amendment met his views of the matter exactly. So far as he was concerned, that provision had been inserted in the article in deference to the opinion of several respectable gentlemen in the convention who were in favor of a separate supreme court and to those who might at some future period desire such a court to be organized. For himself he was in favor of the nisi prius system entire.

Mr. Chase expressed himself in favor of the amendment. He desired to see some system adopted which should be permanent, whether a nisi prius system or a separate supreme court. Whichever course was adopted the people could change it hereafter if they saw fit by amending the constitution.

Mr. Martin said that the objections which he had submitted yesterday to the article as it now stood dictated the amendment which he had offered last evening. The article as it stood left the whole matter open to the legislature, giving us neither the one thing nor the other. It was singular that members should be in favor of tying the hands of the legislature in every other subject and yet leave them loose on this, the most important of all. Even the legislature itself was not so important a branch of government as the judiciary. That was the bulwark of our liberties. He wished to see some system of judiciary established in the constitution and made as perfect as possible. He considered the convention, by rejecting the amendment which he had last offered, as having decided against a separate supreme court, and in favor of the circuit system. Since the convention had so decided, it was his object in offering the present amendment to carry out and perfect the views of the majority.

If gentlemen would travel through the territory they would find hardly a county in favor of the present system of the judiciary law. This was particularly the case to his own knowledge in the eastern portion of the territory; and he knew of no reason for this feeling of opposition, except the fact that the same judge sitting in the district court and hearing arguments on points of law and deciding on them there sits also in the supreme court. Now in op-

position to four-fifths of the people of the territory, he could not be in favor of the same system as it was proposed to be carried out in the article before the convention. What would be the effect if it were carried into practice? The article proposes to throw into one district the counties of Racine, Walworth, Rock, and Green. In those counties there were probably not more than twelve hundred cases on the docket, of which not more than one-tenth were jury cases. Take the next district, including Milwaukee, Waukesha, Jefferson, and Dane. In these counties the number of cases did not exceed those in the first district, and not over 120 of them were jury cases. In the third district, composed of the counties of Washington, Dodge, Columbia, Marquette, Sauk, and Portage, Washington might give 100 cases a year, Dodge 50, Columbia 40 or 50, and Sauk about the same. The whole district would not exceed 250 or 300 cases, making not over 30 jury trials. In the northern district the result would be the same. The western district might afford as many as the districts which included Milwaukee and Racine. Out of the five judges, therefore, there would be two who would have comparatively nothing to do; not enough to brush up their legal knowledge and render them competent to sit on the supreme court bench—not even on the circuit court. We are to have these five judges quartered upon us and two of them utterly incompetent; for if they were competent when they ascended the bench, they would not have business enough to do to keep them so. They would employ their time in any other business than the official duties which they were elected to discharge.

If the amendment now before the committee prevailed, Mr. Martin said it was his intention to propose another which should diminish the number of judges to not exceeding three—the present number—and give them only nisi prius power on the circuits. He resided in the district in which under the present system the courts were held by Judge Miller. Out of a population of 210,000 in the territory, fully 140,000 resided in that district; yet he had never learned that Judge Miller had too much to do. Whenever he was in his county he seemed to be very much at his ease. If there was any part of his district in which he was very much occupied it was Milwaukee. In the remaining portions of his district he believed he could hold two terms a year in each county without being overworked. Again, it was to be remembered that in municipal districts municipal courts might be established. Two years would not pass

by before there would be such a court in Milwaukee, with judges who would possess all the powers of circuit judges so that the circuit judge would have nothing to do in that city.

Mr. Martin said he had made these remarks not with a view of finding fault with the report of the committee. His amendment of yesterday was offered for the purpose of clearing away difficulties which had arisen in the discussion and to settle the question on a firm basis. He wished to see no such scenes in the legislature of the new state as had been enacted in Kentucky during the prevalence of the old and new court parties, and such as would be certain to arise under the proposed system here—one legislature of one party establishing courts and appointing judges, and another legislature elected by another party throwing them down and building up new ones. It had been decided on this floor by an emphatic vote that we were to adopt the nisi prius system; he wished to see that system, then, made as perfect as possible, and with a view to that object desired to lessen the number of judges. If there were too many of them, those who had little or nothing to do officially would occupy their time in other pursuits, and we should find them engaged in speculations, trading horses or buggies and selling town lots. Let us, if we are to adopt the nisi prius system, establish it as firmly and in as much perfection as possible, so that no contingency shall make it necessary to change it. It was easy to foresee what the business of this territory was to be for the next ten years. Let us then provide for it. If the constitution was good for anything it ought to last for ten years. Let us make our judiciary system as perfect as possible, and if even in spite of the utmost caution some trifling error should creep in, that will be a small difficulty compared with leaving the matter open to the legislature.

Mr. Beall spoke.

Mr. Dunn said that having yesterday discussed the merits of the fourth section of the article he had no intention now to harass the committee with further arguments. He must, however, make a few remarks in reply to the gentleman from Brown (Mr. Martin). He could not but regard himself as having been decoyed into yielding his assent to the amendment proposed by that gentleman. When he first proposed it, he (Mr. Dunn) thought it was offered in good faith and with the intention of perfecting the article. But in the course of his remarks he (Mr. Martin) had admitted that it was only the entering wedge for another amendment which would de-

stroy the effect of the whole system. He was ready to meet Mr. Martin on his arguments in support of that amendment, but considered while the present proposition was before the convention it would be out of place to do so. If the first amendment should prevail, he would meet the member from Brown on the grounds which he had assumed in reference to the second.

Mr. Judd spoke. Mr. Whiton made some remarks.

Mr. Martin: I find all those gentlemen who have spoken in favor of the nisi prius system have an extraordinary facility of dodging the question. None of them come up to it and none of them have answered a very simple argument which I addressed to them. The gentleman from Dodge (Mr. Judd) has charged me with blowing hot and blowing cold with the same breath. This is the very charge which I might make against him and other gentlemen who have supported the same views. I said yesterday and I repeat today the arguments which have been used here in favor of the nisi prius system and against the system proposed in the article, for in that article such a system is not proposed—and we are told that the legislature shall establish a separate supreme court. They agree in favor of one system and tell us we shall have another. I stated when I was up before that I was in favor of a separate supreme court giving the judges nisi prius powers, but in this the convention once overruled me. The convention having decided that question, I did not wish to bring it up again. All that I intended by the amendment which I proposed was to perfect the nisi prius system under the article as reported—and I stated that if we had five judges, two of them would be incompetent. That part of my argument gentlemen have not seen fit to answer. The judges in two of the districts will not have official business sufficient to occupy one-tenth part of their time, and will fill up the intervals with other occupations. Should either of them be a physician, he would have ample opportunity to practice his profession; if a lawyer, he would be debarred from so doing.

In perfecting the system which has been agreed to by the majority, I stated that I wished to reduce the number of judges. But that proposition is not now before the committee. The present amendment is merely the first step toward it.

I might bring forward a great many arguments against the proposed system. It might be used as an argument that with five

judges on the bench the judge who tried the case below would not be allowed to try it above, and the trial would be confined to the four other judges brought from other parts of the state who have not the same acquaintance with the details of the case. It provides in fact for the appointment of judges, not by the governor, not by the legislature, but by other districts to try causes brought up on appeal before them from the decision of the judge in the district where they were first tried. My plan would be to restrict the number of judges to three and give them business and salary sufficient to make the office an object to any man. Then, on trial in the circuit courts, whenever any question of law arises, let the point be reversed and not argued before the circuit court. The judge could then come upon the supreme bench perfectly free to hear and to decide. In this manner we can establish a competent nisi prius system and one which will insure good judges. We shall have everything to make it an excellent system, with many arguments and examples in favor of it. For if we turn to the adjudications under this system so organized in other states, we shall find decisions which would do honor to any country. But the system as it is now presented in the article before the convention is confused, and it is left to the legislature to determine whether to let it remain or strike it down.

I am not strenuous in favor of either system; whichever the majority shall determine on I shall support with all my heart. But whichever is agreed on, let us perfect it in the constitution and leave nothing unsettled or in doubt.

Mr. Lovell said that in some remarks he had made yesterday he had expressed his wish to see the system fixed and he would support the amendment on that ground. The settlement of the question of a separate supreme court ought not to be left to the legislature. It was intrusting an unsafe power to such a body and one which might and in all probability would be used for political purposes.

He had been gratified at hearing the gentleman from Lafayette (Judge Dunn) say that he approved the amendment; and was equally grieved to hear him say afterwards that he would oppose it as an entering wedge to destroy the nisi prius system. He did not so regard it, but rather as a step towards perfecting the system as reported by the committee. But if it was an entering wedge, he

feared no such wedge. He hoped if such a wedge was needed, it would be used. There was no fear that the convention would be entrapped into the adoption of provisions which they did not want.

All the arguments which he had heard on this subject—all at least which could be dignified by the name of arguments—had been in favor of the nisi prius system. He had supported that system and had opposed the amendment offered by the gentleman from Iowa (Mr. Bishop) and now supported the amendment of the gentleman from Brown (Mr. Martin) because it settled the principle that the judges should perform nisi prius duties. The arguments which were used to show the excellency of this system were to him perfectly conclusive. No one could be a good mechanic unless he was diligent in learning his trade, nor a good artist unless he spent much time in studying his profession; neither could any man be a good judge unless he was constantly practiced in the duties of his office. How was it possible for men to become competent judges who would be employed only four or at the utmost six weeks in the year upon the bench? It would not be pretended that they would employ the rest of their time in thought or study.

The judges under the nisi prius system were brought nearer to the people and were better acquainted with the business which would spring up in court. They were more practical men and better enabled to decide on the supreme bench from the knowledge they acquired on the circuits. On the other hand, the supreme bench made better circuit judges. They would hear arguments on points of law in the supreme court—hear arguments of the ablest counsel—and decide on them after calm reflection, and they could bring the knowledge thus acquired to bear in the circuit courts.

The palmiest judicial days of the state of New York were under the nisi prius system. The bench was then adorned by such men as Kent, Spencer, Thompson, and many others. No objection was then raised to the nisi prius system. What was the course adopted by these judges? They required the lawyers when important points arose to reserve them, so that time could be had to examine and decide them. Such would always be the case where we had competent judges. The difficulty did not exist so much in the danger of having corrupt ones. If we should have any incompetent judges, the people would cry out against them, not against the system. If, then, it was true that the experience of sixty years in New England, of fifty in the supreme court of the United States, of twenty in the

state of New York, and of centuries in England had confirmed the excellence of the system, let us adopt it and fix it here. In the state of New York this system had been tried up to the year 1820. The business of the courts was then crowded so much that they organized a separate supreme court. Any lawyer would admit that the instant that court was organized the decisions as they are to be found in the reports grew worse and worse. Johnson's reports are good law all over the world where the common law is known. Not so of Cowan's and the later reports. In Massachusetts, where the nisi prius system is continued, the reports have maintained a uniform excellence. Take the example of Illinois. Although there the nisi prius system was deformed and weakened by the too great number of the judiciary, yet ask all gentlemen who are informed on the subject and they will tell you that the decisions improved in character the very moment the separate supreme court system was abandoned. Under that system the people of Illinois had three judges rusting upon the bench. One of these was Judge Smith, whose opinions were not much regarded then, but after he had been on the circuit bench for two years they became valuable.

If this system is correct, let us engraft it in the constitution and not leave it in the power of the legislature to deprive us of its advantages. It was but the other day when the article on education and school funds was before the convention that the gentleman from Rock (Mr. Whiton) said that if the appointment of superintendent of schools was left to the legislature it would be thrown into the very hotbed of politics. Will not the same argument hold in its fullest force against throwing the decision of this question into the same hotbed opposition. I believe in tying up the legislature so as to confine them to their legitimate business of making laws and in confining each branch of the government within its proper bounds.

It had been suggested by the gentleman from Brown (Mr. Martin) that with five judges we should have two who from want of practice would be incompetent. Whether they would be so or not, they might be so, and the legislature would be besieged year after year to increase the circuits. If there were five or six persons who thought they might be elected to fill the new office, they would all join influences in besieging the legislature for the increase. Suppose the circuits are increased. Then all who desire a separate supreme court will besiege the legislature for that, and they will obtain it; for every man who has aspirations to a seat on the su-

preme bench will join in the application. If the nisi prius system is to be adopted, let it be firmly fixed in the constitution. If not, let us submit to the people some other system which may be deemed better. If it was provided that the circuits might be reduced to four, the legislature would be operated upon to keep it as it was. They could not alter it if they would, for here comes in another provision that they cannot alter the circuits so as to remove any judge. The provision which classes the judges so that one goes out of office each year increases the difficulty.

The proverb had been used as an argument by the gentleman from Fond du Lac (Mr. Beall) that "sufficient to the day is the evil thereof—take no heed for the morrow." This was a good principle if applied to a man's individual affairs or his religious sentiments, but a very bad one if applied to matters of government. The members of the convention were sent here to "take heed for the morrow." They must settle the provisions of the constitution on a sure and permanent basis, so that justice may be done freely and without denial—promptly and without delay.

Mr. Doran called the attention of the committee to the remarks of the gentleman from Fond du Lac (Mr. Beall) wherein he held the friends of a separate supreme court responsible for the arguments and statements of the gentleman from Brown (Mr. Martin). If the remark had any reference to himself, it did not apply. He had not supported the amendment offered by the gentleman from Brown; and as that gentleman did not see fit yesterday to come out distinctly in favor of a separate supreme court, he did not think that those who did so should be held responsible for that gentleman's arguments. As regarded the remarks of the gentleman from Racine (Mr. Lovell), they approximated so closely those of the gentleman from Brown, that he held them in some distrust. They reminded him of the remark of the old Trojan: *"Timeo Danaos et dona ferenter."* He held it to be a maxim, when gentlemen proposed to give evidence of facts, that they should give not only a part but the whole truth. Now as regarded the evidence which had been brought forward of the state of New York, gentlemen forgot to state that when the nisi prius system prevailed there and the judiciary bore the high character that had been justly attributed to it, there was a court of errors above it, where sat the judges of the supreme court, the chancellor, and other dignitaries. If they would give us the system with that addition, he would agree to it;

but when it was proposed that the same judges should sit in the courts below and in the court of highest appeal above, he could not sanction the system. Mr. Doran said that all the arguments which he heard on this floor in favor of the nisi prius system described it as the English system. Now he thought he had the other day fully established that the system proposed here bore no analogy to the system carried out in England.

Mr. Chase regretted that even on the offering of an amendment gentlemen found it necessary to go into long arguments in favor of the separate supreme courts, or the nisi system. There was now a plain and simple proposition before the committee: whether it was expedient to leave the power in the legislature to establish a separate supreme court, or not. He supposed that five judges would be amply sufficient to discharge all the judicial duties of the new state for ten or fifteen years to come. If so, was it expedient to allow the legislature to tamper with the system that might be established, before the expiration of that time? He thought the proposed amendment would improve the article and place the question at rest so that the people would know on what system the judiciary of the state was established.

Mr. Judd made some remarks.

The question being taken on the amendment proposed by Mr. Martin, it was decided in the negative—19 voting in the affirmative and 23 in the negative.

The committee then rose and by their chairman reported progress thereon and asked leave to sit again. Leave was granted.

On motion of Mr. King the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

The convention resolved itself into committee of the whole for the further consideration of No. 7, article on the judiciary, Mr. King in the chair.

Mr. Vanderpoel offered an amendment to section 23, providing that the legislature should appoint a commissioner to revise the rules of practice, forms, etc., in courts of law. The amendment was adopted.

Mr. Doran moved to strike out section 19. He said the article abolished the office of master in chancery. He wished by this mo-

tion to ascertain the reasons of the committee for providing for the abolition of that office.

Mr. Whiton explained that the duties of that office so far as related to taking testimony would be performed by the courts, and so far as related to selling land, etc., by the sheriff; so that officer was unnecessary.

Mr. Doran said that so far as the selling of land was concerned the provision might be well enough, but as to the taking of testimony he thought it was not. If the courts were to be required to take all testimony where masters of chancery had done it heretofore, it would cause a large additional expense. He had known suits where a master in chancery was employed five weeks in taking testimony. The number of judges would have to be increased fourfold to enable them to do all this, and the expense increased proportionally.

Mr. Whiton spoke.

The motion did not prevail.

Mr. Lovell offered an amendment to section 15, to strike out the words "coextensive with the county in which they are elected" and insert "such" jurisdiction, etc., "as shall be prescribed by law." Mr. Lovell said he offered this because he thought it would create difficulty to fix the jurisdiction of justices absolutely coextensive with the counties in which they held their offices. Another difficulty would be that injustice might be perpetuated under it. A debtor might be sued in a town remote from where he lived, for the mere purpose of harassing him. He had known instances of this kind. He thought the extent of the justices' jurisdiction should be left to the legislature.

Mr. Doran said the amendment could be supported on different grounds with wise propriety, e.g. the convenience of attorneys. If the debtor and creditor resided in different towns, the former would have to go to the town where the latter resided to sue him, or if he sued him in the town where he resided, the latter would have to come there. Which should be done? He thought the creditor should have the right to sue in the town where he resided, not have the burden thrown upon him of going to the town where the debtor resided to commence suit.

Mr. Lovell said that the gentleman had misunderstood him, and it was singular he should have done so. His amendment had nothing to do with the convenience of attorneys. It did not provide

that the creditor should not sue in the town where he resided, when the debtor resided in another town. But to allow a creditor to sue in some remote town where neither of the parties resided, for the mere purpose of harassing the debtor, was putting an instrument of oppression in the hands of the former. Mr. Doran did not conceive that any man would ever be foolish enough to bite his own nose off to spit it at his enemy. In the case supposed, the creditor would make himself as much trouble as he did the debtor. He did not believe any such case would ever arise.

Mr. Judd spoke.

The amendment was adopted.

Mr. Martin offered an amendment to the effect that the judges first elected should remain in office five years before a separate supreme court should be created. The amendment was adopted.

Mr. Kilbourn moved to amend section 19 by substituting the word "prohibited" for "abolished."

Mr. Lovell suggested, as an amendment, to insert the words "creation of," so that the clause would read: "the creation of the office of master in chancery is hereby prohibited." The amendment was accepted, and the original amendment adopted.

Mr. Kilbourn offered an amendment, to add a new section providing that there should be an election of judges in June next, and that they should come into office in August, etc. The amendment was not adopted.

The committee then rose and by their chairman reported the article back to the convention with sundry amendments.

The question being on concurring in the amendments of the committee, and a division having been called for, the question was put first upon concurring in the first amendment, which was to amend section 4 by prefixing the following words: "For the term of five years and thereafter." And the question having been put upon the adoption of the same, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 50, negative 9; for the vote see Appendix I, roll call 148].

Mr. Bishop moved a reconsideration of the vote just taken. And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 32, negative 28; for the vote see Appendix I, roll call 149].

Mr. Harvey remarked that he had voted for the reconsideration merely out of courtesy to those gentlemen who had voted under a

misapprehension; he was in favor of the amendment. Mr. Doran said he preferred the article as first reported by the committee, rather than as it was amended in committee of the whole. If we were not to have a separate supreme court established now, it should certainly be left in the hands of the people to establish one when they deemed it necessary and proper. Why put off the possibility five years, till an evil system is fastened firmly upon us? He could see no reason for it. Mr. Beall spoke.

The question was then put upon concurring in the first amendment of the committee, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 41, negative 21; for the vote see Appendix I, roll call 150].

The second and third amendments, which were: "Second. Amend section 4 in the second line by striking out the words 'a majority' and inserting the word 'four.'

"Third. Add to section 4, 'And whenever the legislature may consider it necessary to establish a separate supreme court, they shall have power to reduce the number of circuit court judges to four and subdivide the judicial circuits, but no such subdivision or reduction shall take effect till after the expiration of the term of one of the said judges, or till a vacancy occur by some other means,'" were then severally concurred in.

The question then being upon concurring in the fourth amendment, which was to amend section 7 by striking out in the seventh line the words "two years" and inserting the word "year"; also by striking out in the eighth line the word "ten" and inserting the word "five,"

Mr. Chase said he hoped the amendment would be concurred in. It was by far the most important one made in committee. As the vote by which it had been adopted had been a close one, and he noticed that several members were not in their seats, he moved a call of the house.

Mr. Dunn said he would not detain the convention with any remarks. He had said before all he had to say on the subject. He hoped the amendment would not be concurred in.

Mr. Lakin said he was opposed to the amendment as it stood and in favor of a medium ground. (He suggested an amendment fixing the terms at seven years and providing that the term of one judge should expire in three years, and one annually thereafter.)

Mr. Beall spoke.

Mr. Reed preferred the amendment to the amendment and thought his constituents would prefer it. They were opposed to the elective judiciary, but if that were adopted they were in favor of

long terms as the only safeguard from the evils which they apprehended from it. He preferred seven rather than five years.

Mr. Chase, as to the remark about a medium ground, said that the ground proposed by the gentleman from Grant was a medium not between extremes but between a medium and an extreme. He thought five years was the proper medium.

Mr. Cole (of Grant) said he had made up his mind not to say anything upon the subject of the judiciary, having full confidence in the committee who had that subject in charge, but he felt bound by a sense of duty to oppose this amendment. The principal recommendation of this proposed change in the report of the committee to the convention seemed to be that it was new and "progressive." For his part he was not one of the medium "progressive" kind and had no desire to be esteemed one of that school. He considered it a merit in a statesman to listen to experience, as it was in a sailor in unknown seas to consult the charts of those who had gone before him. He considered this proposition of an elective judiciary with short terms as one of the most leveling of this leveling age, and it leveled downwards. It was designed to level the judiciary down to the ordinary meanness and corruption of party strife. He knew it had been said that the elective principle should be applied to the judiciary as well as to the other departments of government, and he had little hope of convincing those who used this coy that it was not so. But still he thought he could see a radical difference between the duties of a judge and a representative which made it proper that the latter should be under the immediate control of the popular will, and the former not. Policy and practical expediency were different in different states, and sections, and cities. They were always debatable, and there was no such thing as absolute right in regard to them. Whether a new county should be erected, or a bridge built, or banks established—on such questions it was very proper that the public will should be absolute and the representative a mere tool for carrying it out. But the law according to its perfect idea—the power which ascertains and administers justice between man and man—was not one at Athens, one at Rome, and one at Corinth, but everywhere the same, immutable and eternal. It should not be at all subject to the fluctuations of popular will nor in any way affected by the different power and political importance of those whose rights might be adjudicated upon. The very object of the advocates of short terms was to bring the judi-

ciary under the immediate control of the popular will. That was the very reason why he opposed it. True, gentlemen had contended that good judges would be reëlected and that the best judicial talent would be continually called out. But he did not believe this. He had watched the workings of the elective spirit the past few years and he thought it had already lowered the judiciary. As parties were organized it was seldom or never that the personal character and abilities of the candidate were the principal matters passed upon at the election, and it was contrary to the elective principle to make personal qualifications the test in political officers. The officers elected were regarded as the mere agents of the electors to carry out their views. Thus we should have party judges—Whigs, Democrats, or Abolitionists—and their political, not their personal, character or judicial qualifications would be the question voted on by the people. Availability would be looked to as in other cases, and the office would be given as a reward for political services. The office of judge would in short be reduced to the same situation as all elective offices are now. All these evils—all the evils feared from the experiment of an elective judiciary—would be greatly aggravated by the amendment now proposed, establishing short terms. If experience was to be regarded at all, it was opposed to the whole project. It had been tried in Mississippi, and the decision of her supreme court in favor of repudiation had made not only that state but the whole Union a byword of reproach all over the civilized world. This example was enough to show the evils of having public opinion represented on the bench.

Mr. Cole said he had not intended to go into any elaborate argument but only to express his fervent hope that the amendment so fraught with evil might not be concurred in.

Mr. Larrabee corrected the gentleman from Grant in regard to repudiation in Mississippi. That gentleman had spoken of the decision of the supreme court of that state in regard to the constitutionality of the state bonds as an instance of the manner in which an elective judiciary was warped by popular feeling. He was wholly mistaken as to the fact. The decision was directly against the current of popular will at the time, and the opponents of it had always had a large majority in the state.

Mr. Gale said that since the report of the committee had been made, he had received a number of letters from his constituents—lawyers and others—upon the subject, and they were unanimously

in favor of a term of five and opposed to one of ten years. Some of the opponents of the term of five years had been bold enough to avow that they were opposed to the elective judiciary in any form. He had hoped that these would have tried to argue the point and to abide its fate, but they had not done so. There was no effective opposition to the elective principle. He thought then that those who were in favor of the system should be allowed to arrange its details and that the enemies of it should not attempt to burden it with amendments which would make it unpopular and less likely to succeed.

The President decided that the amendment of the gentleman from Grant in the form in which it stood was not now in order.

Mr. Chase moved a call of the convention, which was ordered, and Messrs. Biggs, Colley, Fox, Prentiss, Rountree, and Secor reported as absent.

Mr. Wheeler moved that Mr. Fox be excused from his attendance, which was agreed to; Mr. McDowell moved that Mr. Biggs be excused from his attendance, which was agreed to; Mr. Foot moved that Mr. Colley be excused from his attendance, which was agreed to; Mr. O. Cole moved that Mr. Rountree be excused from his attendance, which was agreed to; Mr. Judd moved that Mr. Prentiss be excused from his attendance, which was agreed to. Mr. Estabrook moved that all further proceedings under the call be dispensed with, which was agreed to.

Mr. Kilbourn moved to amend the amendment by striking out the word "five" and inserting the word "eight."

Mr. Chase asked of the gentleman from Milwaukee, as he had on a former occasion, to withdraw his amendment and allow a fair vote to be taken on the proposition for five years.

Mr. Kilbourn said he would like to accommodate the gentleman, but in the present circumstances he did not feel bound to make way for him. He preferred to obtain an expression of the convention on the term of eight years first. He was strongly of the opinion that the term of five years was too short to secure on the bench the class of persons that was desired. The danger, as he apprehended it, was that good men could not be induced to accept the office. How would the five-year term operate at first? One judge would continue in office but one year, one two years, one three years, etc. Now, was it probable that five good lawyers could be found willing to break up their practice and go on to the bench with but one chance in five of holding the office five years, and a very probable chance of holding it but one? This difficulty—this effectual

bar to the probability of getting good judges—met us at the very organization of the government. If the elective system could work well at all, it could not, so arranged. He hoped to see it so arranged to prove that the system would work well. It was one thing to select good men, and quite another to get them to accept the office when it involved a sacrifice of their best interests. The medium ground was the proper one under the circumstances, but five years was not a medium; it was the lowest possible extreme, with an annual election of one judge.

Mr. Gale, in answer to the remark that able lawyers could not be induced to leave their practice to go on to the bench with a term of five years and a salary of $1,200, and that it would be a positive sacrifice for them to do so, said he did not believe there were ten attorneys in the territory now making that sum by their practice, and it was a fact, too, that those who were making the most were not those who were most fit to be judges.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 20, negative 40; for the vote see Appendix I, roll call 151].

The question was then put upon concurring in the amendment of the committee, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 39, negative 21; for the vote see Appendix I, roll call 152].

The fifth, sixth, and seventh amendments, which were: "Fifth. Amend section 10 by striking out in the third line the word 'other' before the word 'office' and inserting after the word 'trust' the words 'except a judicial office during the term for which they are respectively elected'; also by striking out in the fourth line the words 'judge of the supreme and circuit court' and inserting 'a judicial office.'

"Sixth. Amend section 14 by adding: '*Provided,* however, That the legislature shall have power to abolish the office of judge of probate in any county and to confer probate powers upon such inferior court as may be established in said county.'

"Seventh. Amend section 15 by striking out in the seventh line 'coextensive with the county in which they are elected in such cases' and inserting before the word 'civil' the word 'such,' " were then severally concurred in.

The question then being upon concurring in the eighth amendment, which was to strike out section 16 and substitute the following: "The legislature shall pass laws for the regulation of 'tribunals of conciliation,' defining their powers and duties. Such tribunals may be established in and for any township and shall have power to render judgment, to be obligatory upon the parties when they voluntarily submit their matter in difference for arbitration and agree to abide the judgment or assent thereto in writing," Mr. Sanders

moved to amend the amendment by striking out the word "shall" and inserting the word "may," which was agreed to. And a division having been called for, there were 20 in the affirmative and 16 in the negative. The amendment as amended was concurred in.

The ninth amendment, which was to amend section 18 by striking out in the first line the word "shall" and inserting the word "may," was then concurred in.

The tenth, eleventh, and twelfth amendments, which were: "Tenth. Amend section 18 by striking out the words 'shall be paid into the treasury of the state.'

"Eleventh. Amend section 19 by striking out the word 'abolished' and inserting the word 'prohibited.'

"Twelfth. Strike out section 21," were then severally concurred in.

The question then being put upon concurring in the thirteenth amendment of Mr. Vanderpoel, which was : "Add the following, to stand as section 23: 'The legislature at its first session after the adoption of this constitution shall provide for the appointment of three commissioners whose duty it shall be to inquire into, revise, and simplify the rules of practice, pleadings, forms, and proceedings; and arrange a system suitable to be adapted to the courts of record of this state; and to report the same to the legislature at such time as may be prescribed, subject to their modification and adoption; and then their commission to cease, unless otherwise provided for by the legislature,' " Mr. Harvey moved to amend the amendment by substituting the following: "Section 23. The legislature, at its first session after this constitution shall take effect or at the next subsequent session, shall provide for the appointment of three commissioners whose duty it shall be to revise, simplify, and arrange the statute laws; and to revise, reform, simplify, and abridge the rules of practice, pleadings, forms, and proceedings of the courts of record of this state; and to suggest and report to the legislature such amendments as they may deem proper; which amendments the legislature may adopt, or modify and adopt, and alter from time to time as in their judgment the public good may require."

Mr. Harvey proceeded at some length to comment upon the points of difference between his substitute and the amendment of the committee. The margin of one year he thought preferable, in view of several considerations mentioned, especially that it would increase the probability that our commissioners might avail themselves of the labors of the commissioners appointed under a similar provision of the new constitution of the state of New York. The substitute included provision for revising and reforming, by the same commissioners, our scattered, crude, and incongruous statute laws, and finally it enjoined upon the legislature the duty of perfecting a thorough legal reform, if one set of commissioners failed to accomplish it.

Mr. Harvey continued his remarks on the general subject, in substance as follows: I am aware, Mr. President, that this convention have become tired of delay in the passage of this article—that their patience has become well nigh exhausted by attention to the debates, propositions and counter propositions, amendments, and amendments to amendments, which have impeded every step in our proceedings since this article came up for discussion, illustrating in number and relative importance the idea of infinite gradation in animal existence expressed in the couplet

> And even fleas have still less fleas to bite 'em,
> Thus they succeed ad infinitum.

But I should do injustice to the sense I entertain of the importance of that work of judicial reform, which it is the aim as well of the section reported by the committee as of the substitute I have had the honor to present to provide for, did I fail to improve this occasion to urge some of the considerations which weigh on my own mind in favor of this measure, if I did not urge the necessity I conceive to exist for inserting a provision in the constitution positively enjoining upon the legislature the duty of early attention to this subject. Without a mandatory provision I have little faith that anything effectual will be done for many years. Legislatures are prone enough to those petty innovations which make the capital of small politicians; but in projecting and carrying out radical reforms—such as go to turn back the current of power and privilege, constantly setting from the many towards the few—their action is ever too slow for the popular impulse. Especially do I fear to await voluntary legislative action in this reform, which is supposed to make against the interests of a large profession, members of which generally hold a commanding influence in our legislative bodies. Had the legislature of New York been prompt in remedying the gross evils felt and acknowledged to exist in the judiciary department of the government of that state, the expense and trouble of holding a convention to revise their constitution, and the elections accompanying or resulting from its convocation, with the cost and vexations growing out of the delay of a needed reform, would probably have been saved to the people of that state.

The grand object of providing a judiciary department of government is, without doubt, Mr. President, as is the aim of all litigation, the redress of the wrongs and enforcement of the rights of

the citizen. But the administration of justice in our courts has become so widely diverted from its legitimate intent, that mere secondary questions of forms of procedure have assumed the first importance; and these grand objects, if not completely lost sight of, have been shoved far into the background. Pleadings at law are matters of so much technical nicety that the party seeking the enforcement of a right or the redress of a grievance by our courts finds his way to the court and jury a constant succession of pitfalls and traps, and a single false step is fatal to his suit. A broad and barren waste of technicalities and legal fictions, the labyrinths of which can never be threaded by the uninitiated, separates the people from justice; and the party seeking a remedy at law, like the adventurer in search of the magnetic poles of the earth, brings back no result of his weary search save the journal of the route he has traveled, the dangers he has avoided, and perhaps a chart laying down the rock on which he finally made shipwreck. For these he pays his fortune, his prospects, and his hopes, for no benefit save to the profession who make such matters their study. Every other department of our national and state government is marked with a distinctive national character—is free, is American; but the structure of our courts, the forms of pleadings and rules of procedure in those courts are copied to a great extent from the mother country. English form books are the guides of our lawyers; English maxims, rules, precedents, and decisions control greatly the administration of justice. We have not even the rules and practice, purged and pruned by recent reforms, now used in the courts of England; but antiquated, wordy, and senselessly specific forms, the relics of a more barbarous age, devised in times when the ignorance of jurors rendered strict and specific forms necessary, reducing the questions at issue to nice and comparatively unimportant points, and subsequently modified and given shape at that period when scholastic pedantry overran and perplexed with its arbitrary rules and pompous verbiage every department of science. Why, sir, even our deeds of conveyance, as well as the forms of pleadings in our courts, and to a minor extent the composition of our statute laws, run into the same extravagances. All the nearly synonymous words and phrases in which our language abounds are heaped together, and the mass repeated and reproduced with but slight variation, till the simple idea is lost in a mist of phraseology, when a single word would clearly and explicitly convey the sense.

Then we have five or six particular forms of action at law, each having its special and technical form of pleadings. Under these divisions are arbitrarily classified most of the wrongs arising in human transactions. A proper classification often defies the analysis of the most experienced practitioners and judges in our courts, and yet a wrong classification or the calling of an action by a wrong name is made fatal to the cause of the suitor seeking justice. The pleadings under these separate forms are filled with false allegations and legal fictions. These may bear a certain conventional relation to a truth they are supposed to represent, and that relation may be tolerably well understood by the profession; but to the great mass for whose relief courts should be designed they are literal falsehoods. Hence it comes that lawyers are the only persons who have any knowledge whether the wrongs of the citizen are such as the courts can afford redress for, and the only persons who can obtain the least measure of justice from these courts. We can expect no reform so long as the people make no effort to pierce the veil of mystery that now surrounds the administration of justice and that mystery is profitable to those initiated within its folds. The forms of pleadings in our courts will never be reduced to the standard of plain English and common sense, so long as writing is readily paid by the folio and fees can be graduated by the length and imposing appearance of the "documents" requisite in a suit at law.

I am aware, sir, that the cry of "legal reform" is regarded by many as raised by ignorant prejudice or mischievous demagogism. I do not doubt but a large proportion of the profession regard as exceedingly dangerous any innovations upon the ancient and venerable usages of our courts. The weight of even this authority should not make us doubt the reasonableness or practicability of a reform that commends itself to our common sense. It is the too common error of cultivated minds to prefer long-familiar channels of thought; to fear innovation, to cling to accustomed abuses in blind dread of untried reforms. I have often heard quoted as the favorite maxim of a somewhat eminent judge in a sister state: "Better that ninety-nine guilty persons should go unpunished, than that one guilty person should be punished contrary to the forms of law." This judicial maxim at once illustrates the attachment of the profession to the forms in which they have become versed and presents

the crying evil under which we suffer. The sacred "forms of law" are of more importance than justice.

But we are told that to release our courts from the restriction of these strict and stringent forms will result in untold abuses, make our judges arbitrary tyrants, and in the end prove subversive of all the aims of litigation. The warning might intimidate, did not our present system so completely fail to subserve the attainment of justice. The practice of cutting up and subdividing all suits at law—giving each a particular name, forbidding a man to prosecute except in the precise form to which his action belongs, and punishing him if he makes a mistake, when the line between them is so difficult to discover that the most learned judges differ—renders the attainment of anything like justice through our courts a proverbial "uncertainty." Mr. O'Connor, a distinguished member of the bar of New York City and a strenuous advocate of legal reform in the convention of 1846, cites an instance where an action of debt was brought to recover about $1,000. The defendant insisted that the form of action should have been covenant. A learned judge at circuit decided that the action was in right form. The supreme court, three years afterwards, in a learned opinion citing almost all the books of the common law, held the same opinion. Yet that judgment two or three years afterward was reversed by the unanimous opinion of the court of errors, and the plaintiff compelled to pay costs far greater in amount than the original claim. Mr. O'Connor further remarks that chancery courts have extended their originally limited jurisdiction, and the courts of law liberalized their remedies and encroached upon the peculiar province of chancery, so that these jurisdictions are absolutely interlocked so as to puzzle the most learned to distinguish where law practice ends and chancery begins. Yet bringing a suit at law, when the remedy should have been in equity, subjects to a nonsuit; and the mere question to which court a suit belongs often costs years of litigation and the entire fortune of the applicant seeking justice. The plaintiff in the case of *Elmendorf* v. *Harris* (5th Wendell's *Reports*), as quoted by Mr. O'Connor, applied for remedy at law in the court of common pleas. The judge decided that relief could not be had at law. The supreme court some years after said the same. Seventeen volumes of Wendell's reports elapse, and we find the decision of the court of errors that his remedy was at law. After this delay and ruinous cost, he could have a trial of the merits of

the case. Our books are full of nonsuits, after long and expensive litigation, merely because parties, lawyers, and judges do not know the true form of action, or within which jurisdiction the action appropriately belongs.

I will not delay this convention with a lengthy comment upon these facts, merely remarking that there must be something radically defective in our administration of justice when a man may be compelled to push his claim for the enforcement of his rights or redress of his wrongs through every grade of our courts and never have the intrinsic merits of his case taken the least notice of—courts, counsel, parties, and jurors all bending to the consideration of some technical point which is made vital to the suit but which has no sort of relation to justice in the premises. I must confess, Mr. President, that while I discuss this matter with unfeigned diffidence of my own information on the subject, I am skeptical as respects the existence of any magic that peculiarly propitiates justice in the declarations, pleas, replications, rejoinders, etc., etc., etc. of proceedings in equity or the multiplied fictions of the pleadings at law. It seems to my humble comprehension that the two systems (law and equity) can be blended, the present arbitrary distinctions in actions at law abolished, our antiquated forms substituted by plain declarations of fact, and thus our courts become Americanized—all their proceedings marked with that simplicity, energy, and straightforwardness which we proudly claim as national characteristics. Let the suitor be able to enter our courts, state his case in a direct manner; the defendant answer as explicitly; and the court and jury give judgment as to right and wrong in the case in view of the facts set forth. I do not pretend that the section reported by the committee, or even the substitute under discussion, explicitly enjoins the complete and radical reform just hinted at. But let three commissioners—"men learned in the law," if you please—as I understand the gentleman from Lafayette wishes so to restrict the selection—for we want the pruning work of intelligent reformers, not the blind cutting and slashing of ignorant and prejudiced innovators—let them be men of eminent learning and ability, but imbued with the warm impulse of real improvement, and I believe that the whole reform will be produced in or result from their labors.

To show how great a change could be effected by merely a judicious revisal and abridgment of the forms at present in use, I

beg leave to read in contrast two forms of declaration in an action for slander, cited by Mr. Chatfield, an eminent lawyer in the New York convention, in argument on a similar proposition before that body.

[SUPREME COURT]

A. B. complains that C. D. on the tenth day of August, 1846, at Albany, spoke concerning the said A. B. the following false and slanderous words, to wit:—You are a thief. He is a thief. He stole a sheep. He stole, and ought to go to state prison. To the damage of the said A. B. C. F., Att'y.

This is simple, plain, practical—it is common sense! Can as much be said for the following, which Mr. Chatfield says would be the form under the present system in the courts of that state?

SUPREME COURT

Of the term of January; in the year one thousand eight hundred and forty-five.

Otsego County, ss.—John Doe, plaintiff in the suit, by Richard Roe, his attorney, complains of James Stiles, defendant in this suit, by the filing and service of a declaration and not by a writ of a plea of trespass on the case. For that, WHEREAS, The said plaintiff now is a good, true, and honest and faithful citizen of this state and as such hath always behaved and conducted himself and had deservedly obtained the good opinion and esteem of all his neighbors and other good and worthy citizens of this state to whom he was in any wise known, to wit, at the city of Albany and until the committing of the several grievances by the said defendant as hereinafter mentioned the said plaintiff had not been guilty or been suspected to be guilty of the crime of larceny or any such crime; yet the said defendant, well knowing the premises, but greatly envying the happy state and condition of the said plaintiff, and contriving and falsely intending to injure the said plaintiff in his said good name, fame, and credit, and to bring him into public scandal, infamy, and disgrace, with and amongst all his neighbors and other good and worthy citizens of this state, and to vex, harass, impoverish, and annoy him, the said plaintiff—heretofore, to wit, on the twenty-second day of August, 1846, in a certain discourse which the said defendant then and there had in the presence and hearing of divers good and worthy citizens at Albany in the county of Albany, falsely and maliciously spoke and published to, of, and concerning the said plaintiff, these false, malicious, and defamatory words, following, that is to say:—You, the said plaintiff, are a thief; you (the said plaintiff again meaning) stole; you (the said plaintiff again meaning) stole a sheep; you (the said plaintiff again meaning) robbed a henroost; you (the said plaintiff again meaning) stole, and you (the said plaintiff again meaning) ought to go to state's prison; he (the said plaintiff again meaning) is a thief; he (the said plaintiff again meaning) stole; he (the said plaintiff again meaning) stole a sheep; he (the said plaintiff again meaning) robbed a henroost; he (the said plaintiff again meaning) stole; and he (the said plaintiff again meaning) ought to go to the state's prison, and thereby then and there meaning that the said plaintiff had been and was guilty of larceny.

By reason whereof, the said plaintiff hath been greatly injured in his said good name, fame, and credit and hath been brought into public scandal, infamy, and disgrace with and amongst all his neighbors and other good and worthy citizens of this state, insomuch that divers of those neighbors and

citizens have wholly refused to have any intercourse, transaction, or acquaintance with the said plaintiff, as they were before the committing of the said several grievances by the said defendant, hereinbefore mentioned, used and accustomed to have, and otherwise would have had, sustained great damage, to wit, ten thousand dollars, and therefore he brings suit.

E. F., Attorney

Contrast, too, the following declaration in an action for assault and battery, with any form now in common use:

[SUPREME COURT]

A. B. claims that C. D. on the first day of August, 1846, struck him, the said A. B., to his damage. C. F., Attorney

Are not such reforms as these practicable? Are they not demanded by the spirit of the age, by every consideration of public interest and public safety?

I do not pretend that every practicable measure of legal reform will enable us to dispense with that useful and honorable profession, the profession of the law; neither do I join in any sweeping tirade of denunciation against a calling which has been the school of many of the brightest intellects and most pure and brilliant statesmen the world has ever known. I will even admit that much of the keenness and readiness of intellect which peculiarly distinguishes that profession is acquired by fencing with the rigid and technical forms I would see reformed in their practice in courts. I honor that industry which qualifies its possessor by patient study of these forms for defending his client from injury through their misapplication. At the same time, while I regard the public good which demands the changes I have hinted at as paramount to every interest of the few, I most implicitly believe that the profession would be elevated in usefulness, dignity, and popular estimation by a thorough judicial reform. This would winnow the profession, driving off to more appropriate and for such more useful pursuits that pettifogging class of lawyers, the disgrace of the fraternity, who make their advantage in deepening the mystery which surrounds the system and live solely by playing the tricks and fitness of the trade; while it would retain and secure in public confidence those whose minds are imbued with principles of justice and whose talents peculiarly fit them for righting the wronged, however subtle the web in which injustice may have enveloped itself.

Mr. President, the spirit of innovation and renovation which is constantly remodeling every other department of government has

until recently left the judiciary almost intact, a venerable relic of the past. Its changes have commenced. Our judicial functionaries can no longer be left to hold their offices by any other tenure than the free suffrages of the people. Other and more important changes are projected. The people will determine that the system which governs all their relations and transactions shall no longer remain a mystery. New York has taken decisive preparatory steps toward radical reform, the initiative which was the work of the enlightened convention which recently revised her constitution. The friends of legal reform are now anxiously watching how far she will venture and what will prove the result of her efforts. But nothing save the actual experience that the seeds of hope which have been engendered in their minds will produce nothing but fruitful mischiefs will eradicate the belief that it is practicable to open a short, plain, and direct road to tribunals of public justice—that the difficulties of obtaining justice should be confined to the nature of the wrong itself and not be found, chiefly, in obtaining access to the power that can afford the redress.

Mr. Vanderpoel said that when he first saw the gentleman last up offering his lengthy substitute and rising into such lofty and solemn strains of eloquence in support of it, he had supposed that his poor proposition was to be totally annihilated for some gross fault which his humble intellect had not discovered. But as the gentleman progressed in his speech he had discovered that the propositions were nearly identical, and he now saw that he had offered it merely as a means of delivering himself of a fine speech with which he had been pregnant. This was all well enough for this purpose, and the speech was a very good one; but as to the intrinsic merits of the two propositions, he did not think that that offered by the gentleman was any improvement upon his own. He had seen in his experience the evils of the present system of legal forms and practice; and as neither the judiciary committee nor anyone else had proposed any way to remedy it, he had framed the amendment he had offered, and being no lawyer he had taken the precaution to submit it to the scrutiny of the honorable Chief Justice (Mr. Dunn) who, with some slight alteration, had approved it. Thus he had the advantage of the gentleman in the concurrence and approbation of those who understood the subject best. He thought, therefore, that his amendment would answer every purpose as well, if not better, than the substitute proposed.

Mr. Chase said he liked the substitute well, the original better, but the speech best of all. But as he supposed that all the members were familiar with the grievances so fervently dwelt upon by the gentleman from Rock and encomiums upon the necessity of providing a remedy—in fact, just about to adopt the proposition without dissent when he arose—he was not sure that the gentleman's eloquence had been put to good use. He hoped, however, he would write out his speech and have it printed for general circulation.

Mr. Kilbourn said he perceived the substitute contained one provision which the original did not. It proposed to insert a requirement in the constitution, not only that the legislature should provide for a revision of the laws as well as the practice, but that they should be revised in a certain manner. The other provided only for a revision and reform of the practice, pleadings, forms, etc. of the courts. He thought the latter provision was a good and proper one, the former not. The gentleman from Rock (Mr. Harvey) it was to be noticed had said nothing in support of the peculiarity of his provision. He had spoken only of the evils in the forms and practice now in use. He had omitted to assign any reason why the legislature should be required to provide for revising the statute laws in a certain manner. Mr. Kilbourn thought that the original amendment provided for all that was necessary—all that the gentleman himself had undertaken to show was necessary—and that the substitute provided for what was unnecessary and improper.

Mr. Gale preferred the substitute, and one good reason for it was that it provided for a revision of the statutes, which the other did not. This was very much needed. The statutes were now scattered through a number of pamphlets which were very difficult to be obtained; and many late ones had abolished those preceding, so that it was difficult to ascertain the actual existing law. He thought the revision of the statutes and of the practice and pleadings should be done together, so that a harmonious system might be established; and he thought, moreover, that this could be done in no other way. There could be no question but that a radical revision of the practice and pleadings, as well as of the statutes, was necessary.

Mr. Harvey had underestimated the paternal anxiety of the gentleman from Jefferson. That gentleman's investigations in the mystic pages of—the old constitution—had disclosed a section which he thought should be in the one they were then framing. He had improved the chance for reputed authorship by copying and propos-

ing a part of the section in the old constitution. This he withdrew at the time at the solicitation of the chairman of the judiciary committee, in order that a well-matured and suitable section on the subject might be drafted and reported by that committee. The gentleman's time while awaiting the action of the judiciary committee had, it seems, been occupied in watching the gap thus left open; and this morning we saw the anxious, would-be father choking off the gentleman from Fond du Lac (Mr. Beall) who, from inadvertency or indifference to the aspirations of the gentleman, had proposed a section on this important subject. The gentleman had finally been gratified by the committee of the whole in having his proposition received and reported to the convention. Mr. Harvey did not wish to be guilty of any discourtesy to the honorable gentleman from Jefferson. He had gone so far as to offer to that gentleman the substitute he now proposed to the convention, which had been carefully drawn and designed to cover the whole subject, and asked that gentleman to propose it in lieu of his own copy; this would have obviated any further interference or remark from him, and the gentleman might have had all the thunder. But the gentleman preferred his own bantling. Mr. Harvey thought he had shown points of difference between the substitute and the section reported from the committee of sufficient importance to afford ample apology for the trouble he had given to the convention, without laying to his charge the motives which the delegate from Jefferson had with so much unfairness, discourtesy, and lack of gentlemanly propriety attributed to him. The substitute gave a margin of one year within which the commissioners might be appointed; and Mr. Harvey thought he had submitted important reasons for this difference. It included provision for a revisal of our statute laws, now scattered through so many pamphlets, and which were incongruous and contradictory in their provisions, and it recognized the power in and enjoined the duty upon the legislature to perfect the work of judicial reform if one set of commissioners failed to do it. In these points the substitute differed from the original section, and he hoped if the convention deemed these of sufficient importance to merit the preference of the substitute to the amendment of the committee, they would adopt it, disregarding the cries of an ambitious parent over the wounds which he might conceive such action to inflict upon his precious child.

As for the insinuations of the gentleman from Fond du Lac (Mr. Chase) that he had consumed the time of the convention in making a speech for popular effect in favor of a proposition upon which the convention were already unanimous in opinion, Mr. Harvey would remark that the gentleman would find no little measure of hostility to judicial reform, even in this body, and that the charge of uselessly consuming the time of the convention came with a very bad grace from a gentleman from whose lips a wag in the corner behind him had tallied twenty-three speeches on the same day during the present week.

Mr. Vanderpoel remarked that as the gentleman from Rock (Mr. Harvey) and himself were alike ignorant of the law, he thought perhaps it would have been proper that neither of them should have put himself so far forward in proposing reforms in it.

The question was then taken on the adoption of the substitute, and it was decided in the negative. The amendment of the committee was then concurred in.

Mr. Doran moved to amend the article by striking out all after the first section and inserting:

"Section 2. The judicial power of the state (except as before provided for impeachments) shall be vested in a supreme court, circuit courts, county courts, justices of the peace, and in such municipal and other courts as the legislature may from time to time establish.

"Section 3. The supreme court shall consist of three judges who shall hold their offices for the term of nine years, except two of the first elected judges, the term of one of whom shall be three years, and of the other, six years, so that one judge of said court shall be elected every three years. The term of service of the said judges first elected shall be determined by themselves by a lot or in such manner as they may agree upon, which shall be certified to the governor, and his commissions shall be issued to them for the terms respectively so determined.

"Section 4. The jurisdiction of the supreme court shall extend over the state. It shall be a court of appeals and for the correction of errors together with such other powers and duties as may be prescribed by law; but in no case shall a trial by jury be allowed in said court.

"Section 5. Provisions shall be made by law for holding at least two terms of said court in each year.

"Section 7. The several circuit courts shall consist of one judge, whose term of office shall be five years; they shall be courts of general jurisdiction, except in such matters as may be vested in other courts to their express exclusion; and they shall possess chancery as well as common law jurisdiction.

"Section 9. The judges of the supreme court shall be elected by the electors of the state qualified to vote for members of the legislature; and the judges of the circuit courts shall be elected by the electors of the several

districts; and no election for judges shall be held within thirty days of the time of holding any general election.

"Section 10. The several judges of the supreme court shall receive an annual salary of not less than $1,500; and the several judges of the circuit courts shall receive a salary of not less than $1,200 dollars, to be paid quarterly out of the state treasury.

"Section 11. The county courts shall consist of one judge, and their jurisdiction shall extend over the county in all cases or suits removed from justices of the peace by appeal, certiorari, or in any other manner; in all cases or suits where the debt, demand, or sum claimed shall not exceed five hundred dollars; in such prosecution for crimes or misdemeanors upon complaint, as may be prescribed by law. [They shall also be probate courts for the county, and the judges thereof shall have such other powers and shall perform such other duties as may be prescribed by law.]

"Section 12. The judges of the county courts shall be elected by the qualified voters of their respective counties, and shall hold their offices for the term of four years, and shall receive a salary of not less than — hundred dollars, to be paid quarterly out of the county treasury. The salary of the said judge in each county shall be fixed by the county board previous to his election and shall not be reduced during the term for which he may be elected; and the legislature shall provide such tax on suitors in the several county courts from time to time as will together with the probate fees pay the salary of each judge.

"Section 13. There shall be a competent number of justices of the peace elected by the qualified voters of each city and two in each town of a county. They shall have such criminal and civil jurisdiction as may be provided by law; but they shall not have jurisdiction of any matter of controversy where the title or boundaries of land may be in dispute.

"Section 14. The justices of the peace in office at the adoption of this constitution may continue in office during the term for which they were elected; and no justices shall be elected under this constitution, unless to fill vacancies, or in newly created wards or towns, until the expiration of the terms of the several justices as aforesaid.

"Section 15. The election of the judges of the several courts and of the justices of the peace shall be held, conducted, and certified in manner prescribed by law. The returns of all elections of judges and justices of the peace shall be made and certified to the governor, who shall thereupon (after the classification and allotment as in this article provided) issue a commission under his hand and the great seal of the state, to the person [so] elected, for the term for which he may be so elected; and the said returns shall be filed and preserved in the office of the secretary of state.

"Section 16. Whenever any vacancy shall occur in any of the supreme or circuit courts, the governor shall fill the same by appointment and commission under the great seal of the state, and the person so commissioned shall hold the office until the first day of January next after an election of some person [who] shall have been duly elected and qualified to fill such vacancy; and the governor shall also issue his proclamation requiring the people to elect at the next annual election after such vacancy may happen a person to

fill such vacancy, who, when elected, shall be commissioned for the remainder of the term of the person whose place he was so elected to fill.

"Section 17. Vacancies in the office of county judge shall be filled by the county board and commissioned by the governor until the first day of January after the next annual election, at which time a person shall be elected and commissioned to fill such vacancy for the remainder of the regular term and no longer. And vacancies in the office of justice of the peace shall be filled by an election in the town or ward for the remainder of the regular term and no longer.

"Section 18. The judges of the several courts and justices of the peace, before they proceed to execute the duties of their offices, shall take and subscribe before some officer qualified to administer the same the following oath or affirmation, viz.: 'I, —, do solemnly swear (or affirm) that I will support the Constitution of the United States and of the state of Wisconsin, and that I will administer justice without respect to persons, and do equal right to the poor and the rich, and that I will faithfully and impartially discharge all the duties incumbent on me as (judge or justice, as the case may be) according to the best of my abilities and understanding, so help me God.' The said oath or affirmation [of a judge] shall be filed and recorded in the office of the secretary of state, and of a justice of the peace in the office of the clerk of the county court.

"Section 19. No judge shall receive any fees or perquisites of office, or other compensation, except his annual salary. The annual salary of any judge may be increased but shall not thereafter be reduced during the term for which he shall be elected; any person appointed or elected to fill a vacancy shall have the same rights in this respect as the person in whose place he shall be so elected or appointed.

"Section 20. The judges of the several courts may be removed from office by impeachment or by a vote of two-thirds of each branch of the legislature, upon a fair trial before a joint committee of each house, after due notice to the accused, or on conviction upon indictment for any criminal offense; and the said vote of the legislature or the record of conviction and sentence shall be certified to the governor, who shall thereupon by proclamation declare the office vacant.

"Section 21. Justices of the peace may be removed from office upon conviction upon indictment of any criminal offense or of any malfeasance in office; and such removal shall compose part of the sentence that may be entered up against the person so convicted.

"Section 22. There shall be three circuit court judges elected at the first election of judges, and the legislature shall divide the state into three circuits; the legislature may, however, from time to time change, increase, or alter the circuits, but no judge shall be removed from office by reason of such change, increase, or alteration.

"Section 24. The first judges elected under this constitution shall enter upon the discharge of the duties of their respective offices on the first day of — next, and their constitutional term shall commence on the first day of January in the year 1849.

"Section 26. Judges of the supreme or circuit courts shall not be permitted to practice as attorneys or counsellors at law or solicitors in chancery in any of the courts in this state or the United States within this state. Judges of the county courts may practice as attorneys or counsellors at law or solicitors in chancery in the supreme or circuit courts of the state or in the court of the United States within the state, but in no suit or action within the jurisdiction of the county courts.

"Section 27. One district attorney shall be elected in each county by the qualified electors thereof at the time of general election for state officers, whose term of office shall be two years and until his successor shall be duly elected and qualified. The first elected officers under this provision shall enter upon the discharge of their duties on the fourth day of — next, and their constitutional term shall commence on the first of January in the year 1849."

Mr. Lovell moved to amend the original article as follows, to wit: "Strike out the fourth, fifth, sixth, seventh, and eleventh sections and insert five sections, to stand as follows:

" 'Section 4. The supreme court shall consist of a chief justice and two associate justices, to be elected by the judicial electors of the state, and two of whom may hold the court. The legislature shall at its first session after the adoption of this constitution provide by law for classifying the justices of the supreme court, in such manner that one of such justices shall go out of office every — years, and thereafter the justice elected to fill the office shall hold the same for — years.

" 'Section 5. The state shall be divided into three judicial circuits, to be composed as follows: The first circuit shall comprise the counties of Milwaukee, Racine, Waukesha, Walworth, Jefferson, and Rock. The second circuit shall comprise the counties of Brown, Manitowoc, Sheboygan, Washington, Dodge, Fond du Lac, Calumet, Winnebago, Marquette, and Portage. The third circuit shall comprise the counties of Columbia, Dane, Sauk, Green, Lafayette, Iowa, Grant, Crawford (including Chippewa for judicial purposes), and St. Croix (including La Pointe for judicial purposes).

" 'Section 6. There shall be a circuit judge elected for each circuit by the qualified electors of such circuit, who shall reside therein and hold his office for the term of five years.

" 'Section 7. The supreme court shall be held once in each year, in each of the circuits, at such time and place as may be prescribed by law. A circuit court shall be held in each of the counties organized for judicial purposes at least twice in each year. The legislature shall also provide for holding one of said terms of the circuit court by one of the justices of the supreme court, but such justice shall exercise a common law jurisdiction only.

" 'Section 8. The legislature may alter the limits or increase the number of circuits, making them as compact as may be and bounding them by county lines; but such increase shall not exceed two, nor shall such alteration or increase have the effect to remove a judge from office. In case of an increase of circuits the judge or judges shall be elected as provided in this constitution.' "

Mr. Whiton moved to amend by striking out in section 4 the last paragraph and inserting the following words, to wit: "The said separate supreme court when so organized shall not be changed or discontinued by the legisla-

ture, and the term of office of said judges shall be the same as is herein provided for the circuit judges. The said judges shall be so classified that but one of them shall go out of office at the same time."

Mr. Sanders gave notice that he would move to amend the article by adding as section —: "The legislature may provide for the apportionment of one or more persons in each organized county and may vest in such persons judicial power as shall be prescribed by law: *Provided*, That said power shall not exceed that of a circuit judge at chambers."

Mr. Sanders moved to reconsider the vote on concurring in the eighth amendment of the committee of the whole, which was agreed to. Mr. Sanders moved to reconsider the vote amending said amendment by striking out "shall" and inserting "may," which was agreed to. The said amendment to the amendment of the committee was then nonconcurred in. The amendment of the committee was then concurred in.

On motion of Mr. Beall the convention adjourned.

SATURDAY, JANUARY 22, 1848

Prayer by the Rev. Mr. Lord.

The journal of yesterday was read and corrected.

Mr. Estabrook, from the committee on education and school funds, made the following report, to wit:

"Your committee, to whom was referred the petition of Updike Rathbone, Gilbert Rathbone, and others of the county of Racine, praying this convention to provide in the constitution that preference should be given to actual settlers on the school lands, when such lands should be brought into market, respectfully report that in the opinion of your committee such settlers as at the time of the admission of this state into the Union may be in possession of the school lands of the state, by virtue of any lease or permit granted under any law of the territory, ought to have preference in the purchase of such lands whenever they may come in market. But your committee are also of opinion that this is a proper subject for legislation, and as such it is deemed inexpedient to make it a matter of constitutional law. All of which is respectfully submitted.

E. ESTABROOK, Chairman"

Mr. Carter, from the majority of the select committee on that subject, made the following report, to wit:

"The select committee, to whom was referred a resolution to pay the account of H. Tuttle, report that they have examined the subject and find that Mr. Tuttle was employed by the doorkeeper and messenger on the twenty-second day of last month to perform a certain part of their duties as defined and divided by the committee on that subject. He not having been employed by the convention or any of its officers authorized to do so, the committee are therefore opposed to the precedent it would establish to recognize the practice, and recommend the adoption of the following resolution: '*Resolved*, That H. Tuttle be allowed $32 for thirty-two days' service, and that the convention dispense with his services in future unless employed or made an officer of the convention.'"

Mr. Dunn, from the committee on revision and arrangement, made the following report, to wit:

"The committee on revision and arrangement respectfully report the preamble and declaration of rights, legislative, executive, and administrative articles, with several corrections to each, in the order here presented, in which they ask the concurrence of the convention.

DECLARATION OF RIGHTS

"First line, second section, 'nor' instead of 'or.'

"Section 6. 'Excessive bail shall not be required, nor shall excessive fines be imposed, nor cruel and unusual punishment inflicted.'

"Section 7. First line, after 'accused' strike out 'hath a' and insert 'shall enjoy the.'

"*Quaere.* 'Behalf' for 'favor' in the same section.

"Section 8. Transpose 'twice' so as to read, 'shall be put twice in jeopardy.'

"Section 9. Strike out in the first line 'within this state' and also 'ought to find' and insert 'is entitled to.'

"Section 11. Strike out all after 'warrants' in the third line and insert 'Shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.'

"Section 16. In the first line strike out 'in this state.'

"Section 18. 'The rights of every man to worship Almighty God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect, or support any place of worship, or to maintain any ministers against his consent; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies or theological or religious seminaries.'

"Section 20. In the first line strike out 'kept' and insert 'in.'

"Section 22. So alter as to read: 'The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.' "

Legislative Article

"Section 4. In the first line place 'annually' immediately after 'choice.' Strike out the last line and insert the words 'as practicable.'

"Section 6. Alter so as to read: 'No person shall be eligible to the legislature who shall not have resided one year within the state and be a qualified elector in the district which he may be chosen to represent.'

"Section 16. Alter so as to read: 'No member of the legislature shall be liable in any civil action or criminal prosecution whatsoever for words spoken in debate.'

"Section 20. Alter so as to read: 'The yeas and nays of the members of either house on any question shall at the request of one-sixth of those present be entered on the journal.'

"Section 23. Alter so as to read: 'which shall be as nearly equal as practicable' and strike out 'throughout the state.' "

Executive Article

"Section 3. Insert after the word 'elected' the words 'by the qualified electors of the state.'

"Section 4. Suggest striking out the words 'by message' and substituting 'may deem' for 'shall judge.' "

ADMINISTRATIVE ARTICLE

"Section 1. Alter so as to read: 'There shall be chosen by the qualified electors of the state, at the times of choosing the members of the legislature, a secretary of state, treasurer, and attorney general, who shall severally hold their offices for the term of two years.'

"Section 2. In the fifth line put a period after 'legislature' and then read 'He shall be ex officio auditor and shall perform.'

"Section 4. Suggest insertion of 'register of deeds' after 'coroners' and alter in fourth line so as to read, 'and be ineligible for two years next succeeding the termination of their offices.' And strike out in the eleventh line 'within the term for which he shall have been elected.'"

Mr. Dunn stated that the committee in discharging their duty had examined the several articles with scrupulous care and had suggested several verbal amendments, in which they had varied the phraseology by selecting such words as conveyed the meaning most fully and as were most generally used in constitutional law. They had also made some grammatical and orthographical corrections, but in no case changed the meaning or sense.

Mr. Prentiss, from the committee on schedule and miscellaneous provisions, made the following report, to wit:

"The committee on schedule and miscellaneous provisions, to whom were referred the petitions of sundry inhabitants of the counties of Fond du Lac and Walworth, praying the convention to change the name of Wisconsin to that of Columbus, having considered the same, respectfully report that in their opinion it is inexpedient to grant the prayer of the petitioners, and they would therefore ask leave to be discharged from the further consideration of said petitions.

THEODORE PRENTISS
G. W. FEATHERSTONHAUGH
J. L. DORAN
E. P. COTTON"

The President announced the appointment of the following select committees, to wit: under the resolution introduced by Mr. Lewis and adopted on the twentieth instant: Messrs. Lewis, Doran, O. Cole, Judd, and Whiton; under the resolution introduced by Mr. Dunn and adopted yesterday: Messrs. Dunn, Lyman, and Crandall.

Resolution No. 2, introduced by Mr. Case yesterday, was then taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

Resolution No. 3, introduced by Mr. Biggs yesterday, was then taken up, when Mr. Chase moved to lay the same upon the table, which was disagreed to. Mr. Dunn moved that the resolution be postponed until Monday morning, which was agreed to.

Resolution No. 4, introduced by Mr. Fenton yesterday, was then taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

Mr. Reymert introduced the following resolution, which was read, to wit: "*Resolved*, That the secretary of this convention be hereby directed to deposit in the office of the secretary of Wisconsin Territory at Madison the constitution of the state of Wisconsin and all petitions, memorials, reports of committees, manuscript journals, and manuscript minutes of the committee of the whole, and all other records of this convention.

"*Resolved*, That the engrossed constitution shall be signed by the members of the convention and by the president and secretary thereof, on the— day of January instant, at — o'clock A.M., in convention, and the following certificate precede the signatures:

" 'We, the undersigned members of this convention to form a constitution for the future state of Wisconsin, to be submitted to the people thereof for their adoption or rejection, do hereby certify that the foregoing is the constitution as agreed to by the convention.

" 'In testimony whereof, we have hereunto set our hands, at Madison, this — day of January, A.D. 1848.'

"*Resolved*, That the secretary distribute the journal of this convention as follows: to each of the delegates, one copy; to the President of the United States, the heads of departments of government, including the commissioners of Indian affairs and the commissioners of the General Land Office, each one copy; to the executive of each of the United States, each one copy; to the secretary of the Senate and clerk of the House of Representatives of the Congress of the United States, for the use of the houses of Congress, each one copy; to the Congressional Library, five copies; to the governor, secretary, and judges of the supreme court of the territory of Wisconsin, each one copy; to the clerks of the courts of the organized counties in this territory, for the use of the respective counties, each one copy; to the territorial library, twenty-five copies. The remainder of the copies shall be deposited in the territorial library, subject to such distribution as may hereafter be directed by law."

The minority of the committee under the resolution of Mr. Carter, of the eighteenth instant, made the following report:

"The minority of the committee, of which Mr. Carter is chairman, report that they consider H. Tuttle entitled to the same pay as the other messengers.

G. W. FEATHERSTONHAUGH
C. M. NICHOLS"

The report of the committee on revision and arrangement was then taken up. And the amendments [of the committees on] the declaration of rights, executive, and administrative articles were then severally concurred in.

Mr. Dunn moved that the consideration of the report relative to the legislative article be postponed until Monday morning, which was agreed to. Mr. Dunn moved that the articles declaration of rights, executive, and administrative be recommitted to the committee, which was agreed to.

No. 7, article on the judiciary, was then taken up. And the pending ques-

tion being on the amendment of Mr. Whiton to amend said article, and having been put, it was decided in the affirmative.

Mr. Lakin moved to amend section 7 by striking out all after the word "direct" in the seventh line and inserting the following: "shall go out of office at the end of three years, one at the end of four, one at the end of five, one at the end of six, and one at the end of seven years, and thereafter, as a vacancy shall happen, a judge shall be elected to fill the same for the term of seven years."

Mr. Lakin said he was in favor of electing the judges by the qualified electors of each district and wished, therefore, to see that system put on such a basis as to be permanent. In trying experiments it was right to try them fairly and not to leave them in so odious a form that any observer could see that they were nuisances. The plan proposed would be found not to work well, and the friends of the elective system would say that it was a failure, when in fact it had not received a fair trial. He did not think members had looked at this matter in a right light. There was something else to be done besides offering men office. Some fascination must be thrown about an office in order to induce competent men to accept it. If gentlemen would but reflect they would see that by the present provisions the system was rendered odious. Members of the bar, to whom the streams of business were flowing, were asked to direct those streams in a different course when they were asked to become candidates for the bench; for no one would put business in their hands when about to take an office which would preclude them from conducting it. What was their recompense for sacrificing their business? In the first place there was a prospect of defeat, which of itself brought some little odium. In the second, if they got the office they got nothing at last. The one term was staring them in the face. He took it for granted the candidates for the judiciary would be chosen from among the members of the bar; but no lawyer would abandon a certainty for an uncertainty. Those who had an itching for office had other fields of contest beside the bench, around which more fascinations were thrown. Now with all these hazards and uncertainties would any man ask the office? None but office-seeking beggars—men who would submit to being beaten and kicked—would be found among the candidates. There was some little fascination and attraction about the bar. The man who threw himself upon his own resources and came and went when he pleased enjoyed some privileges which were not enjoyed by public servants.

If gentlemen who advocated the proposed system would examine who were to be the sufferers by its operation, they might hold different opinions. There was no fear that the bar would be the sufferer. Lawyers were rarely litigants and would take good care of themselves. He would say to gentlemen who were about to adopt a miserable system which would place third-rate demagogues on the bench, that they themselves would be the sufferers. The bar would if anything be the gainer by it. Nevertheless, as a citizen of Wisconsin he wished to see a good constitution adopted, not merely for the advantage of any particular class. Those gentlemen who were in favor of this system were acting for the benefit of a single class and not the class whom they were desirous of benefiting.

No one need suppose that the honor of the office under this proposed system would give it sufficient attraction. It was too empty. No one would wish to be termed a yearling judge or to be liable to removal at the caprice of any legislature.

Mr. Doran said that if he had supposed for a moment that the remedy proposed by the gentleman from Grant was adequate to cure the evils he complained of, he would gladly support it. It was a good principle to choose the lesser of two evils. Under any system we ran a chance of having bad judges. The gentleman from Grant proposed to obviate the evils arising from having judges for a term of five years, by increasing the term to seven. He admired the force of the gentleman's reasoning and the clearness with which he had pointed out the evils arising from short terms, but he could not perceive that these evils would be remedied by substituting a term of seven instead of five years. Hence he thought the gentleman's reasoning, powerful as it was, should be a warning not to place judicial power in the hands of such men as would aspire to it under the proposed system. Were these men who had been so forcibly described by the gentleman from Grant to be the ones to adjudicate in cases of last resort? He found in the gentleman's argument the strongest reasons in favor of a separate supreme court.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 22, negative 33; for the vote see Appendix I, roll call 153].

Mr. Chase moved to amend section 2 by adding the following: "The term of office of the judges of the said municipal and inferior courts shall not be

longer than that of the circuit judges." And the question having been put, it was decided in the affirmative.

Mr. Sanders moved to amend the article by adding the following: "Section —. The legislature may provide for the appointment of one or more persons in each organized county and may vest in such persons such judicial power as shall be prescribed by law: *Provided*, That said power shall not exceed that of a circuit judge at chambers." And the question having been put, it was decided in the affirmative.

Mr. Lakin moved to amend the article by striking out section 13.

Mr. Lakin said that the provision as it stood in the article appeared to him to be a dangerous one. It seemed better on first sight than on close inspection. When anyone was convicted of crime, it must be of some crime recognized in the laws prior to the conviction. No ex post facto laws should be passed. But the section was in this respect altogether vague and uncertain. It did not point out any specific offense, but gave to the legislature an absolute power to remove the judge. It did not provide that they should remove him for any crime known by the law. It required, to be sure, that they should furnish him with a copy of the charges, but it did not specify the nature of the charges, nor did it require that they should be proved. It provided for a system of trial like that used of old in the case of witches. They were thrown into the water; if they swam, they were deemed guilty; if they sank, it was the same thing. If the legislature appointed the judges, there might be some propriety in giving to that body the power of removal. But the article provided that the judges should be elected by the people.

The judiciary were supposed to be governed by some known rules of action. They based their opinions on settled principles of law. The legislature were governed by mere opinion. If the system should be adopted, let it be reciprocal in its operation, so that the judiciary could address out the legislature, as well as the legislature address out the judiciary. If the judges were to be removed at all, let the removal be made for some known offense and by some tribunal established by law; but do not make a mockery of justice by telling the judge he has the opportunity of defending himself, and at the same time depriving him of the means of doing so by any known rules of action. He would ask the gentlemen who formed the committee on the judiciary what rules would govern the legislature in this matter. Were there any rules by which they were

bound to be governed? No. Their power was absolute and arbitrary. They could form fictitious charges and, without any regard to truth to sustain them, vacate the bench. The legislature instead of being governed by rules was governed by the force of circumstances—the rule which governs politicians generally. No man would be found so base and insignificant as to tie his hands behind him and look into a hungry lion's mouth. They could find no candidates for the judiciary under such a system.

Mr. Richardson was sorry that his colleague had thought proper to let loose such a tirade of abuse against the legislature. It seemed to him that if the legislature consisted of honorable and upright men, they would require some reasonable charges against the judges, and sitting as a jury, would do justice. The gentleman had assumed as an admitted fact that the legislature would act in an arbitrary and improper manner. He (Mr. Richardson) did not believe that we should ever have a legislature that would be guilty of such conduct. The gentleman had offered no argument—nothing but assertion.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 6, negative 52; for the vote see Appendix I, roll call 154].

Mr. Lakin moved to amend section 4 by striking out in the sixth line the words "by the qualified electors of the state" and inserting as follows: "in single districts by the qualified electors thereof." And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 11, negative 47; for the vote see Appendix I, roll call 155].

Mr. Gale moved to amend section 19 by adding "And the legislature shall have power to provide by law common forms of procedure for remedies arising under both jurisdictions of law and equity."

Mr. Kilbourn thought that the section introduced by the member from Jefferson and adopted by the convention covered the whole ground sought to be covered by the present amendment.

Mr. Beall spoke.

Mr. Gale requested the chairman of the committee on the judiciary, Mr. Dunn, to state whether in his opinion the ground was covered. Mr. Dunn said the gentleman must exercise his own discretion. For his own part he was opposed to the amendment.

Mr. Sanders thought the legislature had full power to adopt whatever code it should see fit. There was no absolute necessity for the proposition of the gentleman from Jefferson; it was intended only to draw the attention of the legislature to the subject. He was unwilling to encumber the constitution with unnecessary provisions.

Mr. Doran thought the ground was not covered by the section already adopted. He believed there were specific differences between law and equity, which must be provided for by a different and distinct practice; and was of opinion that without the amendment the legislature would not have the power to make the radical change which the gentleman from Walworth (Mr. Gale) required, in order to conform the practice of law with that of chancery. Under the old civil law the judge was required to act as a moderator—to find out and point out the matters of issue and difference. Under the common law practice the parties have to find these out for themselves, and hence the tedious process so objectionable to the people. Hence, in England and in the state of New York commission after commission had been constituted, and reports the most voluminous had been made, in order to simplify the practice. It was all to no purpose, and it was found necessary to let things take their own course. If this amendment were adopted, however, a system might be devised which would bring down the practice to the simple elements of complaint, petition, and answer. No effectual change could be made under the common law practice.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 28; negative 29; for the vote see Appendix I, roll call 156].

Mr. Lovell moved to amend the article by striking out the fourth, fifth, seventh, and eleventh sections and inserting the amendment which was offered by him yesterday.

Mr. Lovell said that although he was aware the convention was anxious to come to a vote on the article, he must as briefly as possible state his reasons for offering this amendment. One object was to reconcile the opinions of those who were in favor of and opposed to a separate supreme court. He thought many of the objections to both the propositions which had been offered would be obviated by his amendment.

Mr. Lovell then sketched to the convention the several features of his proposed amendment. He said that he feared the system as it

was reported would work badly. The term of office was cut down to five years, and one judge would go out each year. Many lawyers of sufficient capacity and standing could not be found who would be willing to leave a lucrative practice to go on the bench, at the hazard of being turned out at the expiration of a single year. The argument that they would be reëlected by the people was not a good one. It was true that the people would reëlect a good judge if they had a fair chance of knowing him to be so; but in one year he would have no chance of displaying his abilities. For this reason he favored the proposition which had been made by Mr. Lakin, of the judges going out in two and three years. He had left the term blank in his amendment and hoped that it might be filled with a term of from two to six years.

Mr. Dunn remarked that the proposition now submitted was, in his opinion, one and identical with that which had been offered by the gentleman from Brown (Mr. Martin). If so, it had been before the minds of members of the convention since the time that that proposition had been offered, and they were now as ready to vote for it as at any other time.

Mr. Lovell moved a call of the convention, which was ordered; and Messrs. Biggs, Carter, A. G. Cole, Colley, Crandall, Fox, Hollenbeck, McClellan, Schoeffler, Ward, Warden, and Wheeler reported as absent.

Mr. Richardson moved that Messrs. Wheeler and Fox be excused from their attendance, which was agreed to; Mr. Sanders moved that Mr. A. G. Cole be excused from his attendance, which was agreed to. Mr. Judd moved that all further proceedings under the call be dispensed with, which was agreed to.

Mr. Jackson moved that the convention take a recess until half past two o'clock P.M., which was agreed to.

HALF PAST TWO O'CLOCK P.M.

No. 7, article on the judiciary, was then taken up, when Mr. Whiton moved a call of the convention, which was ordered; and Messrs. Biggs, Castleman, Crandall, Estabrook, Fitzgerald, Fox, Harrington, McClellan, Nichols, Schoeffler, and Wheeler reported as absent.

Mr. Jackson moved that Mr. Schoeffler be excused from his attendance, which was agreed to; Mr. Jackson moved that Mr. McClellan be excused from his attendance, which was disagreed to; Mr. Judd moved that Mr. Estabrook be excused from his attendance, which was disagreed to; Mr. Richardson moved that Messrs. Fox and Wheeler be excused from their attendance, which was disagreed to; Mr. O'Connor moved that Mr. Nichols be excused from his attendance, which was disagreed to; Mr. McDowell moved that Mr. Biggs be excused from his attendance, which was agreed to; Mr. Sanders moved that Mr.

Castleman be excused from his attendance. And pending the question thereon, Mr. Gifford moved that the convention adjourn. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 12, negative 45; for the vote see Appendix I, roll call 157].

Mr. Judd moved that all further proceedings under the call be dispensed with. And the question having been put, it was decided in the negative. And a division having been called for, there were 24 in the affirmative and 26 in the negative.

Mr. Judd moved that the convention adjourn. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 17, negative 40; for the vote see Appendix I, roll call 158].

Mr. Judd moved to suspend all further proceedings under the call. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 26, negative 31; for the vote see Appendix I, roll call 159].

Mr. Scagel moved that the convention adjourn. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 20, negative 37; for the vote see Appendix I, roll call 160].

Mr. Beall moved that the convention adjourn. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 20, negative 38; for the vote see Appendix I, roll call 161].

Mr. Foot moved that all further proceedings under the call be dispensed with. And the question having been put, it was decided in the negative. And a division having been called for, there were 24 in the affirmative and 24 in the negative.

Mr. Larrabee, by unanimous leave of the convention, asked that Mr. Hollenbeck be excused from his attendance, which was agreed to; when on motion of Mr. Gale the convention adjourned.

MONDAY, JANUARY 24, 1848

Prayer by the Rev. Mr. Lord.

The journal of Saturday was read.

Mr. Rountree presented the returns of the census of Grant County, taken by order of the board of county commissioners of said county, and moved that the same be referred to committee No. 2, with instructions to inquire into the expediency of reporting an additional member of the house of representatives for said county.

Mr. Rountree made a statement of the number of representatives to which Grant County would be entitled under the basis of apportionment, by which he showed that by the new census returns Grant County had a population nearly sufficient to entitle it to one more representative than had been apportioned to it. Mr. Lovell stated that he had calculated the returns now received from the county of Grant and found that it was entitled, or nearly so, according to those returns, to an additional member of the legislature. But he must add that the same was true of Waukesha and Washington counties and he could not go for a change which would not change the entire representation. Mr. Kilbourn wished barely to remark that the proposition of Mr. Rountree must necessarily (if adopted by the convention) lay open the entire subject of apportionment. It was known that there were two or three counties in the same situation, and it could not be denied that these counties were entitled to an addition under the official census. He did not know that the census now brought up from Grant County formed proper data for the action of this convention; or that they could give one more member to Grant than it was entitled to under the official census, without giving members to Waukesha, Washington, and Jefferson, which were also nearly entitled under that census. If the official census were abandoned in the case of Grant, where would this matter end? Every county might put in a new census, and the legislature would run up to its maximum number before they got through.

Mr. Rountree said that it was true that the official returns of Grant County made the population amount to only 11,125. But so soon as the report was made the commissioners, believing it to be incorrect, had met and appointed a competent person to take the census. He had no doubt of its exactness. He would ask the gentleman from Milwaukee who had just spoken, if any other county had sent up any returns in addition to the official ones. On what

ground did he state that other counties were in the same situation? The official census taker of Grant, as soon as the subject was agitated in that county, acknowledged that he had not been very particular in taking the census, that he had made errors, and did not claim anything from the county for his services. Thus an error is evidently shown. Would gentlemen cut the county off from what it was entitled to, because there had been an error in the taking of the census? He did not think any gentleman would propose such a measure of injustice.

Mr. Kilbourn said that the gentleman from Grant seemed to think he intended to do injustice to his county. Such was not the fact. He was willing to do as much for Grant as for any other county. But he could not vote for doing for Grant, under the present return, what was denied to other counties under the official. The only question to decide was whether they should open the whole subject anew.

Mr. Rountree remarked that the person who took the census was not appointed by the governor, but by the county commissioners; that he had acted under oath; and the return came up as fully authenticated as it was possible for it to be without the commission of the governor. It must be recollected by gentlemen that when the subject of apportionment was under consideration, he requested that the article should be laid on the table in order to receive the returns from Grant before the apportionment should be made. It was laid on the table for a few days, when he agreed to have it taken up, believing that the convention would do full justice to his county when the returns should be received.

Mr. Gifford offered an amendment to the instructions requiring the committee to report one more member for Waukesha.

Mr. Castleman moved to amend the instructions so as to give Washington, Walworth, and Rock, each, four representatives and two senators.

Mr. Sanders suggested to the gentleman from Grant to let the subject lie upon the table until tomorrow. Mr. Rountree declined. He asked only to have the returns referred to the committee with instructions to report. If the report should be adverse, he would have nothing more to say.

The amendment was disagreed to, and the question being on committing, Mr. Chase called for a division of the question. The question was then put upon committing, which was agreed to.

Mr. Lovell moved to amend the instruction by adding the following: "and also to such other counties as may be entitled to additional representation, such additional representation," which was agreed to. And a division having been called for, there were 29 in the affirmative and 11 in the negative.

The question was then put upon the instructions as amended.

Mr. Jackson was opposed to the proposition. It would involve the convention in difficulty. After giving Grant County an additional member, it would be necessary to do as much for Walworth, Waukesha, Washington and Jefferson. There would be no end to the difficulty.

Mr. Beall spoke. Mr. Judd made a few remarks.

The question was then taken and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 28, negative 37; for the vote see Appendix I, roll call 162].

Mr. Prentiss, from the committee on schedule and miscellaneous provisions, made the following report:

"The committee on schedule and miscellaneous provisions, in accordance with instructions of the convention, respectfully report the following, to stand as a section in the article on the executive: 'Section —. The governor may in cases of emergency convene the legislature at any other time than that prescribed in the constitution, and in case of invasion or danger from the prevalence of contagious disease at the seat of government he may in like manner convene the legislature at any other suitable place in the state.'

THEODORE PRENTISS
JOHN L. DORAN
E. P. COTTON
J. WARD
JOSEPH COLLEY"

Mr. Dunn, from the committee on revision and arrangement, made the following report:

"The committee on revision and arrangement respectfully report the articles on finance, internal improvements, militia, and on eminent domain and property of the state, with corrections and suggestions, in which they ask the concurrence of the convention.

MILITIA

"Recommend that this article be added as a section to the legislative article."

TAXATION AND FINANCE

"Section 1. Strike out 'throughout the state.'

"Section 2. Strike out 'of the state.'

"Section 5. Strike out in line three 'of the state' and in line four 'of the state for such year'; and in line six 'of the preceding year,' and for 'together with' substitute 'as well as'; and insert 'of the state' after 'expenses' in the second line.

"Section 6. Strike out in line two 'singly or'; also in the ninth and tenth lines 'also a tax sufficient to pay' and 'of such debt'; and in the fifteenth line strike out 'and such' and insert 'nor the'; also in the same line after 'taxes' strike out 'shall not.'

"Section 7. Alter to read as follows: 'The legislature may also borrow money to repel invasion, suppress insurrection, or defend the state in time of war; but the money thus raised shall be applied exclusively to the object for which the loan was authorized or to the repayment of the debts thereby contracted.'

"Section 9. Alter to read: 'No scrip, certificate, or other evidence of state debt whatever shall be issued, except for such debts as are authorized by the sixth and seventh sections of this article.' "

INTERNAL IMPROVEMENTS

" 'Section 1. The state shall never contract any debt for works of internal improvement or be a party in carrying on such works; but whenever grants of land or other property shall have been made to the state, especially dedicated by the grant to particular works of internal improvement, the state may carry on such particular works, and shall devote the avails of such grants and may pledge or appropriate the revenues derived from such works in aid of their completion.'

"And to be added to finance article."

EMINENT DOMAIN

"Section 1. Alter so as to read: 'The state shall have concurrent jurisdiction on all rivers and lakes bordering on this state, so far as the said rivers or lakes,' etc.

"Section 2. Prefix the words 'the title to.'

"Section 4. Strike out in fourth line the word 'state.' "

Mr. Judd moved that the motion made by him on a previous day for a reconsideration of the vote taken on the eighth instant, on the final passage of No. 14, article on legislative, be taken up, which was agreed to.

The question was put upon reconsidering and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 45, negative 21; for the vote see Appendix I, roll call 163].

Mr. Judd moved that the article be referred to committee No. 2 with instructions so to amend section 5 as to provide for the election of senators for

the term of two years and for so classifying them that one-half, as near as may be, shall go out of office at the end of each year.

Mr. Estabrook moved that the committee be further instructed to amend section 25 by striking out the word "shall" and inserting the word "may."

And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 30, negative 36; for the vote see Appendix I, roll call 164].

Mr. Doran moved that the committee be further instructed to strike out section 25.

Mr. Doran assigned as his reason for offering this amendment that it would be perfectly impossible to carry out the principles contained in the article. It was absurd to suppose that a state officer could be bound to let out a contract without having an interest in it, if he thought proper. As regarded the printing, he could anticipate a state of things, such as had already occurred in one portion of the United States, where all the printers might combine together and put the state to great inconvenience. He hoped no such provision would be left in the constitution. As regarded the officer, it was absurd; and as regarded the printing, it would be attended with very great inconvenience.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 25, negative 40; for the vote see Appendix I, roll call 165].

Mr. Folts moved that the committee be further instructed to strike out in section 21 the words "and a half." And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 25, negative 40; for the vote see Appendix I, roll call 166].

Mr. Chase moved to amend the instructions of the committee by striking out the last clause, which was disagreed to.

Mr. O. Cole moved to amend the instructions of the committee by adding in section 4 after the word "county" the word "precinct," which was accepted by Mr. Judd as a modification of his motion.

The question was then put upon committing with the instructions as modified, and was decided in the affirmative.

Mr. Lyman, by leave, introduced the following resolution, to wit: "*Resolved*, That the committee on judiciary inquire into the expediency of providing for a uniformity in deeds for the conveyance of real estate."

The report of the committee on revision and arrangement was then taken up, and the amendments as reported by the committee to articles militia, finance, internal improvements, and on eminent domain were then severally concurred in.

Mr. Dunn moved that the said article be recommitted to the committee, which was agreed to.

No. 7, article on judiciary, was then taken up. Mr. King moved to amend section 7 by striking out all after the word "office" and inserting "in two years, one in three years, one in four years, one in five years, and one in six years, and thereafter the judge elected to fill the office shall hold the same for six years." And the question having been put, it was decided in the affirmative.

Mr. Lakin moved to amend section 13 by adding as follows: "*Provided,* also, A majority of the circuit judges, for like cause and in like manner, may remove from office the members of the senate and house of representatives; and in all such cases a special entry shall be made on a special docket kept for that purpose, and shall be published in some weekly newspaper to be designated by said judges for three successive weeks."

Mr. Lakin said it was well known that he was opposed to section 13. He did not suppose that the amendment would prevail, nor did he greatly care, but felt bound to do his duty so far as he understood it and wished to give the judiciary some chance. It was not fair to tie their hands behind them and suffer them to be voted out of office. If it was provided that their constituents should vote them out, it would be fair enough. It seemed to him that it was but right to give the judiciary a chance to vote out the legislature, and so put them on an equal footing.

Mr. Harvey asked if the gentleman from Grant desired to let loose the tigers of the bench, the lions of the bar, and the hyenas of the legislature.

The question was then put and was decided in the negative.

Mr. Kinne moved to amend the article by striking out section 18.

Mr. Larrabee said he should vote for the motion because he found it asserted in the bill of rights that justice should be free to all. If the section were retained, every person would be obliged to purchase justice.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 26, negative 35; for the vote see Appendix I, roll call 167].

Mr. Kinne moved to amend section 18 by striking out the words "municipal, inferior, and civil courts" and inserting the word "circuit"; also, by adding to the section the words "of said courts."

Mr. Kinne said he felt great diffidence in delaying the action of the committee on the article, but he felt it to be his duty to

propose this amendment. It was a maxim that all classes of men should be enabled to obtain justice freely. The amendment he proposed excluded the tax from causes commenced in justices' courts. He desired that the poor man might at least enjoy the poor privilege of coming before the tribunals of justice without money in his pocket to pay in advance. The amount of this tax must be something. If the legislature should adopt a very small tariff, it would not answer the purpose for which it was intended. It must amount to a considerable sum or it would do no good. Some were in favor of this provision on the ground that it would tend to prevent litigation. It was true it would have that tendency, but if the whole judicial system were abolished, the same end would be still more fully attained. If it prevented the commencement of unjust suits, it would likewise prevent the commencement of just ones.

Mr. Chase thought there was no hardship at all in requiring this amount to be paid in advance. Those who danced should pay the fiddler—those who commenced suits should pay the lawyers. It would all be charged in the bill of costs.

The amendment was disagreed to.

Mr. Doran moved to amend the article by striking out section 5 and inserting the following: "Section 5. The state shall be divided into three judicial circuits, to be composed as follows: The first circuit shall comprise the counties of Milwaukee, Racine, Waukesha, Walworth, Jefferson, and Rock. The second circuit shall comprise the counties of Brown, Manitowoc, Sheboygan, Washington, Dodge, Fond du Lac, Calumet, Winnebago, Marquette, and Portage. The third circuit shall comprise the counties of Columbia, Dane, Sauk, Green, Lafayette, Iowa, Grant, Crawford (including Chippewa for judicial purposes), and St. Croix (including La Pointe for judicial purposes); and there shall be a circuit judge elected for such circuit by the qualified electors of each circuit, who shall reside therein and hold his office for the term of five years."

Mr. Doran said that this amendment was one of those suggested by the gentleman from Brown (Mr. Martin) and that he had come to the conclusion that if there was no separate supreme court there was no use in having five judges. It could not be denied that the territory as it was now divided embraced in the district of one judge a population of 114,000, and that this judge spent a large portion of his time out of the territory, and that he could with ease discharge four times the amount of business that now

devolved upon him. If such was the fact (and it could not be denied), and if saving of expense was the object, there could be no objection to reducing the number of judges from five to three. It was a fundamental maxim to bring home responsibility on the shoulders of public officers. If there were five judges without business, the responsibility was lessened. They would say aye and no as circumstances dictated. On that principle alone it would be advisable to reduce the number of circuits and of judges and increase the responsibility.

Mr. Sanders said that if the gentleman from Milwaukee knew anything about his own court, he must know that the business was between one and two years behind.

Mr. Doran explained.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 5, negative 59; for the vote see Appendix I, roll call 168].

Mr. Lovell moved to amend section 4 by inserting after the word "decision" in the third line "but the supreme court shall never be composed of more than five judges, and whenever the number of circuits shall be increased the five judges having the shortest term to run shall constitute the supreme court." And the question having been put, it was decided in the negative.

Mr. Lovell moved to amend the article by striking out the fourth, sixth, and seventh sections and inserting as follows: "Section 4. The supreme court shall be composed of one chief justice and four associate judges, a majority of whom shall constitute a quorum, and the concurrence of a majority of whom shall be required to a decision. They shall be elected by the qualified electors of the state, and after the first election one of them shall go out of office at the end of two years and one at the end of each year thereafter; and the judges elected after the first election shall hold their offices for the term of six years"; also, add to section 5 as follows: "which circuits shall be subject to alteration as the legislature may from time to time provide; one of the judges of the supreme court shall be assigned to each circuit and shall hold the circuit courts thereof, but they may interchange circuits in such manner as the legislature shall prescribe." And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 10, negative 54; for the vote see Appendix I, roll call 169].

Mr. Fox moved to amend section 9 by striking out in the third line all after the word "term," which was disagreed to.

Mr. O'Connor moved to strike out [section] 12 to the fifth line inclusive and insert: "There shall be appointed by the circuit judge of each district a clerk of the circuit court for each county organized for judicial purposes; and the clerks thus appointed shall give such security as the legislature may require." And the question having been put, it was decided in the negative.

Mr. Lovell moved to amend the original article as follows, to wit: "Strike out the fourth, fifth, sixth, seventh, and eleventh sections and insert five sections, to stand as follows:

" '[Section 4.] The supreme court shall consist of a chief justice [and two associate justices], to be elected by the qualified electors of the state, any two of whom may hold the court. The legislature shall at its first session after the adoption of this constitution provide by law for classifying the justices of the supreme court in such manner that one of such justices shall go out of office every two years; and thereafter the justice elected to fill the office shall hold the same for six years.

" 'Section 5. The state shall be divided into three judicial circuits, to be composed as follows: The first circuit shall comprise the counties of Milwaukee, Racine, Waukesha, Walworth, Jefferson, and Rock. The second circuit shall comprise the counties of Brown, Manitowoc, Sheboygan, Washington, Dodge, Fond du Lac, Calumet, Winnebago, Marquette, and Portage. The third circuit shall comprise the counties of Columbia, Dane, Sauk, Green, Lafayette, Iowa, Grant, Crawford (including Chippewa for judicial purposes), and St. Croix (including La Pointe for judicial purposes).

" 'Section 6. There shall be a circuit judge elected for each circuit by the qualified electors of such circuit, who shall reside therein and hold his office for the term of five years.

" 'Section 7. The supreme court shall be held once in each year in each of the circuits, at such time and place as may be prescribed by law. A circuit court shall be held in each of the counties organized for judicial purposes at least twice in each year. The legislature shall also provide for holding one of said terms of the circuit court by one of the justices of the supreme court, but such justice shall exercise a common law jurisdiction only.

" 'Section 8. The legislature may alter the limits or increase the number of circuits, making them as compact as may be and bounding them by county lines; but such increase shall not exceed two, nor shall such alteration or increase have the effect to remove a judge from office. In case of an increase of circuits, the judge or judges shall be elected as provided in this constitution.' "

And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 15, negative 51; for the vote see Appendix I, roll call 170].

The question was then put upon ordering the article to be engrossed and read a third time, which was agreed to.

On motion of Mr. Carter the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

Mr. Lovell, from the committee on executive, legislative, and administrative provisions, made the following report, to wit:

"The committee No. 2, to whom was referred the article legislative, with instructions, report the same back to the convention pursuant to their in-

structions, with the following amendments, viz.: Amend section 4 by inserting after the word 'county' in the third line the word 'precinct.' Also, amend section 5 by striking out 'annually' in the first line, and by adding to the section as follows: 'The senate districts shall be numbered in regular series; and the senators chosen by the odd-numbered districts shall go out of office at the expiration of the first year; and the senators chosen by the even-numbered districts shall go out of office at the expiration of the second year; and thereafter the senators shall be chosen for the term of two years.' "

Mr. Case moved to lay the report on the table. And the question having been put, it was decided in the negative. And a division having been called for, there were 16 in the affirmative and 26 in the negative.

The question was then put upon concurring in the amendments of the committee, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 34, negative 22; for the vote see Appendix I, roll call 171].

Mr. O'Connor asked leave of absence for Mr. McDowell. Leave was granted. The question was then put upon the passage of the article. And the ayes and noes having been required by the rules, those who voted in the affirmative were [affirmative 45, negative 12; for the vote see Appendix I, roll call 172].

The convention then resolved itself into committee of the whole for the consideration of No. 15, article on miscellaneous provisions; No. 19, article on incorporations; No. 20, article on amendments, Mr. Castleman in the chair.

On motion of Mr. Judd the article on amendments was first taken up. The article was read. Mr. O'Connor offered an amendment providing that when the legislature deem it necessary they may submit the question to the people whether there shall be a revision of the constitution, and if decided in the affirmative pass a law for the calling of a new convention, the amendment also prescribing the maximum number of the body and the time of their assembly.

Mr. Chase thought the amendment superfluous, especially the latter part of it. If the legislature had the power thus to provide for a revision of the constitution, the question would be continually open and agitated. And as to the provision that the number of the convention should not exceed that of the legislature, such a convention would be in no way superior to the legislature, and the revising of the constitution could be left to the legislature as well. It was improper thus to lay restrictions on the convention. And, moreover, without the provision it would be the duty of the legislature to propose specific amendments to the people, when any were deemed necessary.

Mr. Judd spoke.

Mr. O'Connor said, if desired he had no objection to striking out the latter part of the amendment. Mr. Kilbourn had no objection as to the former part, but as to the latter regulating the number and time of assembly, he thought it entirely unnecessary. Mr. Chase said that with the modification the amendment meant nothing, as it merely gave the legislature a power which they would have possessed without it.

Mr. King did not agree with either of the gentlemen and could see no impropriety in the proposed amendment. There were two modes of amendment: First, when any specific amendment or one of no great consequence was desired. In this case the legislature would put it in form and submit it to a vote of the people. Second, when the whole structure and foundation of the constitution was to be remodeled. In that case it would be necessary to call a new convention. Without any provision conferring the power it might be doubtful whether the legislature would have the power to pass a law calling for the assembly of a convention to revise the constitution. That doubt and difficulty had occurred in New York, and this provision would prevent its occurrence here.

Mr. Dunn said as the amendment had been accepted, striking out the latter part of the section, it seemed that all the difficulty was obviated.

Mr. O'Connor said he had not accepted the amendment, and on reflection he preferred not to.

Mr. Kilbourn moved that the latter part of the section providing for the number of the convention and time of assembly be struck out, which was agreed to.

Mr. Whiton moved to amend the section further by inserting the words "at its next session," so that the legislature would be required to pass a law calling a new convention at its next session after it was called for by a vote of the people. The amendment was adopted.

The original amendment was then adopted.

On motion of Mr. King the article was laid aside, and the article on corporations was taken up.

Mr. Sanders moved to add three additional sections: section 1, providing that no corporation should be established without individual liability of the stockholders for corporate debts being required; section 2, that no corporation should possess any greater powers in relation to the issue and circulation of notes, certificates,

etc. as money, than any private partnership; and section 3, giving them the power to sue and be sued. Mr. Sanders said he had taken these sections mostly from the New York constitution. He thought they explained themselves sufficiently and would commend themselves to the favor of the convention.

Mr. Chase said the first section of the article on banking provided for all that the gentleman's amendment contemplated. As to the power of suing and being sued, the very establishment of a corporation necessarily supposed that. He thought that the whole amendment was unnecessary. Mr. Sanders said the object of the provision in the New York constitution in relation to suing, etc. was this: Under the old constitution, there being no provision on the subject, it was held that a corporation could not be sued in a justice's court. The amendment was introduced to remedy that defect. As to the prohibition of banking privileges, he inquired of the gentleman from Fond du Lac what there was in the bank article as at present to prevent, for instance, the Wisconsin Marine and Fire Insurance Company from issuing bills, certificates of deposit, etc. Mr. Chase in reply said the section would reach no individual case like that, nor ought it to. We were providing in general, not aiming at particular existing institutions. Mr. Sanders inquired if the Wisconsin Marine and Fire Insurance Company was not a corporation created by the legislature. Mr. Chase replied that it was not.

Mr. Whiton spoke.

The amendment was lost.

Mr. King offered an amendment to the effect that no municipal corporation should take away the private property of any citizen unless the necessity of it should be established by the verdict of a jury, which was adopted.

Mr. Lovell offered an amendment to stand as section 3, making it the duty of the legislature to provide for the organziation of city and town corporations, etc., which was adopted.

Article 15 was then taken up and read. On motion of Mr. Kilbourn the fourth section was struck out, the same provision being contained elsewhere.

Mr. Estabrook moved to amend by striking out "day" and inserting "Monday" (the commencement of the political year), which was adopted, 24 to 18.

On motion of Mr. King the fifth section was struck out.

On motion of Mr. Chase section 3 was amended by striking out "postmasters excepted."

Mr. Whiton offered an amendment by adding to section 1 the following words: "The general election shall be held on Tuesday succeeding the first Monday of November," etc. The amendment was adopted.

Mr. Kilbourn offered as an amendment to the article a separate section relating to the officers of the legislature. He said that there was great trouble at every session in the election of these petty officers. Candidates came up from almost every county in the territory, and many had to go away disappointed, after all their electioneering. This system produced great vexation and loss of time not only to them, but also to the members. The amendment he proposed would simplify all this and make it much more economical and less troublesome to the legislature.

Mr. Rountree thought it was very necessary to have such a provision. The method heretofore had caused great trouble and expense—much more than might be supposed by those not familiar with the facts in the case. Three times as many officers were chosen as were necessary, and $1,000 was wasted. It was highly proper, he thought, to provide a remedy for this evil in the constitution. Mr. Dunn thought differently. He thought it would be difficult for us to imagine what would be the wants of future legislatures, and provide for them fully in advance. If we could do so, it might be well enough for us to provide for them; but as we could not, he thought we should not make the attempt and fetter them in such small matters relating to their convenience, which were always in other states left to them.

Mr. Kilbourn said the amendment provided for all the officers which were elected by Congress and by many state legislatures, and so provided for all possible emergencies. The regular officers might choose any number of assistants. The only object of putting it in the constitution was to save the trouble and teasing of legislatures and the useless expense of sinecures.

Mr. Beall spoke.

Mr. King said the only effect would be to transfer the teasing from the legislature to the chief clerk and sergeant at arms.

Mr. Fenton offered an amendment to the amendment, providing "that said offices be let out to the lowest bidder." The amendment was adopted.

Mr. Chase moved to amend by striking out all after the words "sergeant at arms. Mr. Kilbourn accepted the amendment.

Mr. Whiton spoke. Mr. Judd spoke.

Mr. Rountree, in addition, said the expense of the system heretofore pursued was very great. Any gentleman who would look on the appropriation bills for the last ten years would see that the pay of officers amounted to a very large share of the legislative expenses. Counties had always sent up their candidates for these offices. Some fourteen had usually been apportioned and they had been fought for and depended on as legitimate spoils so long that it had become an established habit. He was satisfied that the old system had become so fixed that it could not be broken up except by a constitutional provision. He was therefore not willing to leave it to the legislature but would leave it to the constitution.

Mr. Dunn said he was surprised to see this provision supported so zealously and claimed as a great Democratic measure. If that was Democratic, he had not known what Democracy consisted in. It was giving to the chief clerk and sergeant at arms more patronage than to the governor. He thought the servants of the people—the legislature—should keep the patronage in their own hands, as they were responsible for the performance of the duties.

The amendment was adopted, 29 to 11. The article as amended was then adopted, 30 to 17.

Mr. Kennedy offered an amendment, providing that electors residing on Indian lands might be allowed to vote in adjacent counties. Mr. Judd suggested that the amendment should be so amended as to apply only to Indian lands not included in any county. Mr. Kennedy remarked that in Portage County the courts held that they had no jurisdiction over Indian lands and that the sheriff had no authority to execute process therein. Mr. Kilbourn remarked that all the land in the territory would probably ere long be divided into counties, and then the article on the elective franchise would secure the rights of those residing therein. Till then, the legislature could confer the elective franchise on residents on Indian lands by attaching them to adjoining counties. But the terms of this proposition would allow residents on Indian lands out of the bounds of the state to come in and vote.

Mr. Judd spoke.

Mr. Martin suggested to the mover to strike out the word "adjacent" and insert "which includes." The legislature had decided in a case which came up in 1840 that votes cast within Indian territory were bad. He thought, to exclude all doubt hereafter, it should be provided in the constitution that such votes should be legal and that the process of the courts might be executed within Indian territory. Mr. Chase did not apprehend there was any necessity for such a provision in the constitution. The legislature had the power to do all that was necessary in the premises and would doubtless exercise it when called upon to do so. Mr. Reed said that by a law of Congress individuals could not gain a residence in Indian territory. The construction put upon that law was that the residence of persons who went into Indian territory continued in the county from which they came. This provision, therefore, did not seem to be called for.

Mr. Featherstonhaugh offered a substitute, which was accepted by Mr. Kennedy and adopted by the convention.

The committee then rose and by their chairman reported No. 19, article on incorporations, and No. 20, article on amendments, with sundry amendments thereto, and asked the concurrence of the convention therein; and also reported progress on No. 15, article on miscellaneous provisions, and asked leave to sit again thereon. Leave was granted.

No. 19, article on incorporations, was then taken up, and the question being on concurring in the amendments of the committee, Mr. Chase called for a division of the question. The question was then put upon concurring in the first amendment, which was to add as an additional section: "No municipal corporation shall take private property for public use against the consent of the owner without the necessity thereof being first established by a verdict of a jury."

Mr. Kilbourn said he hoped the amendment would not be concurred in. A sufficient provision on that subject had already been made in the bill of rights, and it was not to be assumed that the legislature would authorize the taxing of private property for public use unless the necessity of it were properly demonstrated and adequate compensation rendered. And in some cases such a provision might have an injurious effect in preventing municipal corporations from opening streets or the like, which public convenience required. It would operate as a great restraint upon them.

Mr. King hoped the amendment would be concurred in. The whole object of it was to restrict municipal corporations from taking property at their discretion, as they had done heretofore. All who had lived in a city knew well what a grievance it was to be subject to have their property taken from them against their will, and instead of any compensation being made, their burdens actually increased thereby, as in the case of taking land to make a street and then taxing the owner to open it.

The question was then put and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 44, negative 17; for the vote see Appendix I, roll call 173].

The question being on concurring in the second amendment of the committee, which was to add a new section as follows: "Section —. It shall be the duty of the legislature to provide for the organization of cities and incorporated villages and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit so as to prevent abuses in assessment and taxation, and in contracting debts by such municipal corporations,"

Mr. Kilbourn said if we were engaged in enacting laws about city corporations this might be a proper provision, but he thought it was not now. It should be remembered that the powers spoken of would not be possessed by cities unless specially granted. When a charter was granted, the legislature might insert such restrictions as they chose. To prohibit the legislature from granting to cities the power of contracting debts according to their necessities and their discretion might operate very injuriously in some instances.

Mr. Lovell remarked that so far nothing was said in the constitution about city and village corporations. Now it was necessary for them to have certain powers of local legislation, and without providing for the granting of them in the constitution it might be questioned whether after providing that all legislative power should be vested in the senate and house of representatives it would be constitutional to vest any such power in municipal corporations. As to the abuses which the amendment was designed to restrain, they were very numerous and oppressive. The same provision had been inserted in the New York constitution, and there was no minor provision which gave more general satisfaction. He saw nothing in

the argument of the gentleman from Milwaukee which changed his views with regard to the propriety of the article.

Mr. Doran said that we thus again had the idea advanced that the people were not able to take care of themselves. When the New York constitution was framed the new light which we now enjoy had not dawned. Then it was not known that it was anti-democratic for the general government to improve rivers and harbors. If such a provision as this should be adopted and Milwaukee, for instance, should thus be prohibited from contracting a debt for the improvement of her harbor, there was no way provided in which it could be done. The last chance would be cut off. The general government had discovered that it had no power to do it. The act on internal improvement prohibited the state from doing it; and now this would prohibit the city itself from doing it. He thought it was utterly impossible for the legislature to understand the wants and interests of cities and towns in making these local improvements, as well as the cities and towns themselves, and he therefore hoped the amendment would not be concurred in.

Mr. Lovell said the article was copied from the New York constitution, and it would not prevent, as the gentleman had supposed, the improvement of harbors, etc. It only provided against abuses.

Mr. Whiton moved to amend the amendment by inserting after the word "legislature" the words "and they are hereby empowered," which was agreed to.

The question was then put upon the amendment as amended, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 38, negative 18; for the vote see Appendix I, roll call 174].

The question was then put upon ordering the article to be engrossed for a third reading, and was decided in the affirmative.

No. 20, article on amendments, was then taken up. And the question having been put upon concurring in the amendment of the committee, which was: "At any time if a majority of the senate and house of representatives shall deem it necessary that a convention should be called to revise, amend, or change this constitution, they shall submit this question to the people at the next annual election for members of the legislature, whether they are for or against calling a convention, and if a majority of the qualified voters in the state [voting] thereon shall be in favor of calling such convention, then the legislature shall provide at its next session thereafter for an election of delegates to meet in convention for that purpose," it was decided in the affirmative.

The question was then put upon ordering the article to be engrossed for a third reading, and was decided in the affirmative.

The convention then resolved itself into committee of the whole for the consideration of No. 8, resolution relative to lands in the Fox and Wisconsin River grant, Mr. Root in the chair.

Mr. Chase thought the first resolution was unnecessary, as the committee on revision would attend to the subject of it in connection with others of the same nature. As to the amendment offered, he had some question as to its propriety. If intended to make the first resolution a direction to the legislature, then it should be put in the constitution. If left out of the constitution it would not be obligatory but merely an expression of opinion. It was of no use where it was.

Mr. Reed replied that if the resolution were adopted it would make it obligatory on the committee of revision to attach it or the substance of it to the constitution, which it would not be otherwise. He thought the resolution itself explained its object sufficiently.

Mr. Richardson moved to strike out the second resolution. He did not fully understand the object of the resolution, but thought if it was intended to secure the right of preëmption to the settlers it should be put into the body of the constitution. Mr. Chase agreed with the gentleman from Grant (Mr. Richardson). He thought it would amount to nothing as it stood. It should be in the body of the constitution, and he would therefore support the motion to strike it out here and go for its insertion in the body of the constitution.

Mr. Reed expressed his surprise that gentlemen at this stage of proceedings should express ignorance upon the subject. For the information of such gentlemen he would state that a law had been passed by Congress, granting a quantity of land to aid in the improvement of the Fox and Wisconsin rivers; that under the operation of said law a large tract of land six miles in width, extending from Green Bay to Fort Winnebago, was withheld from sale and must be so withheld, to the great injury of the interests of the northern portion of the territory, until some action was had by the government of Wisconsin. The object of these resolutions was to secure directly to the settlers the right of preëmption to these lands at $1.25 per acre. If these resolutions should pass *together*, the one asking Congress to grant preëmptions at $1.25 per acre would receive great additional weight from the fact that the state

had granted that right to the settlers upon her portion of the reservation. Strike out this resolution and the whole object intended to be secured would be lost and that tract of country remain under the same embarrassment as heretofore. If these resolutions should pass as presented, it guaranteed to the settlers upon the state lands the purchase of their lands by preëmption just as effectually as though inserted in the body of the constitution. And here he must be allowed to express his surprise that one so largely interested in this matter as the honorable gentleman from Fond du Lac (Mr. Chase) should take occasion to oppose these resolutions, the passage of which was so essential to the prosperity of that part of the territory which that gentleman, in common with himself, in part represented in the convention.

Mr. Kilbourn here explained and Mr. Richardson withdrew his motion to strike out, which motion was renewed by Mr. Chase and was lost.

After some further remarks by different gentlemen, the amendment was adopted, 22 to 13.

After some further motions and remarks, which led to no result, the committee rose and by their chairman reported the same back to the convention with an amendment.

The question being on concurring in the amendment of the committee, which was: "*Resolved*, That the foregoing resolution be appended to and signed with the constitution and submitted therewith to the people of this territory and to the Congress of the United States," Mr. Judd moved that the convention adjourn, which was disagreed to. And a division having been called for, there were 15 in the affirmative and 24 in the negative. The amendment of the committee was then concurred in.

The question was then put upon the adoption of the resolution, and was decided in the affirmative. On motion of Mr. Folts the convention adjourned.

TUESDAY, JANUARY 25, 1848

Prayer by the Rev. Mr. Read.

The journal of yesterday was read.

Mr. Prentiss, from the committee on schedule and miscellaneous provisions, reported No. 21, article on schedule, which was read the first and second times and ordered to be printed.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 7, article on judiciary.

Mr. Fenton introduced the following resolution, to wit: "*Resolved*, That the convention will, for the remainder of the session, meet at 9 A.M. daily"; and moved that the fifth rule be suspended for the consideration of said resolution now. And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 54, negative 6; for the vote see Appendix I, roll call 175].

The question was then put upon the adoption of the resolution, and was decided in the affirmative.

Mr. Estabrook introduced the following resolutions, which were read, to wit: "*Resolved*, That the patriotism, courage, and heroic achievements displayed by Captain Augustus Quarles and the men under his command who have fallen in Mexico while fighting under the flag of their country were mostly of the people of our infant state, and their names and acts deserve to be put in perpetual remembrance.

"*Resolved*, That it is recommended to the people of the state to erect by voluntary subscription a monument with suitable inscriptions in commemoration of the names and services of our fellow citizens above named, to be placed upon the public grounds in front of the capitol.

"*Resolved*, That it is hereby made the duty of the state treasurer to receive any moneys contributed as herein recommended, and the same shall constitute the 'Monument Fund,' to be expended in such manner as the legislature may prescribe for the objects contemplated in these resolutions, and no other.

"*Resolved*, That the presiding [officer] of this body be directed to appoint one or more persons, as may be deemed necessary, in each of the counties of this state, to receive subscriptions to said fund and transmit the same with the names of the donors to the treasurer of the state, to be reported to the legislature.

"*Resolved*, That the foregoing resolutions be signed by the president and countersigned by the secretary, and deposited in the office of the secretary of state."

Resolution No. 1, introduced by Mr. Reymert on the twenty-second instant, was taken up, when Mr. Castleman moved to amend the second resolution by striking out the words "o'clock P.M.," which was agreed to. Mr. Reymert moved to amend the first resolution by striking out the word "engross" and inserting the word "enroll"; also by striking out the words "of the committee of the whole," which was agreed to. The resolution as amended was then adopted.

Resolution No. 2, introduced by Mr. Carter on the twenty-second instant, was taken up. Mr. Case moved to amend the resolution by substituting the

following, to wit: "*Resolved,* That H. Tuttle be allowed $48 for thirty-two days' services, to be paid out of the per diem allowance of doorkeeper and messenger, $16 each; and the per diem allowance of the above-named officers is hereby reduced in conformity with this resolution," which was disagreed to. The question was then put upon the adoption of the resolution, and was decided in the negative.

Resolution No. 3, introduced by Mr. Biggs on the twenty-first instant, was taken up.

[Mr. Biggs: Mr. President—I have been induced to offer the resolution which has just been read, not only from a firm conviction on my own part that the proceedings of this convention on this subject as well as the one which preceded it were wrong, but also from the conviction that I should be sustained in the position I have assumed by a large majority of the people of this territory. Another consideration also, Mr. President, for offering this resolution was that I believe the law of Congress for the admission of Wisconsin into the Union was misunderstood by the greater part of the members of this convention, or rather that they were not aware that an interpolation had been made in the copies of that law which were annexed to the old constitution, and by which their action was governed both in this and in the last convention. By whom the interpolation was made or what were the motives, each member of this convention can determine for himself. I can see no other than to deter the convention from asserting the rights of the state and to induce them passively to submit to the dismemberment of her territory.

The general understanding of this law has been that Congress required us by an irrevocable ordinance to accept the boundaries prescribed by the act for our admission into the Union. There is nothing of the kind in the act. The ordinance of Congress of 1787 for the government of the Northwest Territory, or more particularly, the articles of compact in that ordinance, have always been understood and considered as the fundamental law or constitution of the said territory, and consequently, all laws passed in contravention of these articles of compact were unconstitutional so far as they relate to said territory. Such I believe has been the decision of the ablest jurists in the United States, whenever this law has come in question. I will now read the fifth article of compact, it being the only one which has reference to the question now under consideration.

"Article V: There shall be formed in the said territory not less than three, nor more than five states, and the boundaries of the states, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established, as follows, to wit: The western state in the said territory shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash and Post Vincents, due north to the territorial line between the United States and Canada and by the said territorial line to the Lake of the Woods and Mississippi. The middle state shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio by a direct line due north from the mouth of the Great Miami to the said territorial line. The eastern state shall be bounded by the last-mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: *Provided*, however, and it is further understood and declared, That the boundaries of these three states shall be subject so far to be altered, that if Congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted by its delegates into the Congress of the United States on an equal footing with the original states in all respects whatever, and shall be at liberty to form a permanent constitution and state government. *Provided*, The constitution and government so to be formed shall be republican and in conformity to the principles contained in these articles."

The plain, common-sense interpretation of this article, as well as that given it by our wisest statesmen and jurists, is such as is contended for in this resolution. J. Q. Adams on the floor of Congress pronounced it a compact as binding as any that was ever ratified by God in heaven. Chancellor Kent calls the proviso in the fifth article a clear stipulation that an east and west line drawn through the southerly bend or extreme of Lake Michigan was to be the boundary line between the three states and any new state or states that might be formed north of that line, and that stipulation was binding unless withdrawn by common consent. If this is not a fair construction of the language of the proviso, it was useless to insert it so far as the two northern states are concerned.

Congress in the contest between Michigan and Ohio has virtually acknowledged the validity of this article; not indeed by restoring to her the little disputed slips of land (the inhabitants of which were all averse to coming under the government of Michigan) but by giving her in lieu thereof territory as large as some of the states of this Union.

From information elicited during the Michigan and Ohio contest there is, I think, good reason to believe that Congress in prescribing the northern boundary of Illinois, did not intend placing it north of an east and west line drawn through the southerly bend of Lake Michigan, the imperfect maps of that day placing the southern extreme of this lake in 45 degrees, 30 minutes north latitude. That the nonacceptance of the act of Congress defining our boundaries will prejudice our admission into the Union I cannot conceive. There is no such condition in the articles of compact in 1787. There is no such condition in the act of Congress either expressed or implied. There are in that act of Congress certain propositions set forth with which she asks our compliance and for which she offers an equivalent. To those we can cheerfully give our assent. Congress asks no more at our hands save a republican constitution.

Why such an article as that styled "Boundaries" should have a place in and form a part of our constitution I cannot conceive. It is volunteering on our part to perform an act which Congress has not required us to do, and the performance of which can in no way benefit us, but has every chance of proving an irreparable injury by forever closing the door to an equitable adjustment of our southern boundary, which Congress has so invitingly and justly left open. In the states which have been previously formed in the Northwest Territory Congress has by a proviso in the act authorizing them to form a state government required them to assent to the boundaries prescribed in the said act, which was all very right and proper as regards those states and in conformity with the Ordinance of 1787 which permitted Congress to form five instead of the three states originally established, and consequently to alter their boundaries and require their assent to such alteration. But in the case of Wisconsin, such a proviso would have been superfluous. Four states having been already formed, and the ordinance limiting the number that should be

formed in the Northwest Territory to five, it follows that the remaining territory must of necessity constitute the fifth state, over the limits of which no act of Congress has control unless by common consent.

For my own part, I do not feel tenacious about the matter. But I do feel anxious that this convention should give this question a reconsideration and at least go no further than Congress asks us to go. I would do nothing to endanger our admission into the Union; but I think this convention can in their wisdom leave this matter open for future adjudication. I think a large majority of the people of Wisconsin and also of the disputed territory in Illinois demand at least this at our hands.—*Tri-Weekly Express*, Jan. 27, 1848.]

The question was then put upon the adoption of the same, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 29, negative 26; for the vote see Appendix I, roll call 176].

Mr. O. Cole moved a reconsideration of the vote just taken, which was agreed to. Mr. Folts moved that the resolution be laid upon the table, which was disagreed to. And a division having been called for, there were 23 in the affirmative and 30 in the negative.

The morning hour having expired, Mr. A. G. Cole by leave introduced the following resolution: "*Resolved*, That H. Tuttle be and he is hereby allowed the sum of $2.50 per day for his services during the session of this convention since the twentieth of December as assistant fireman." And the fifth rule having first been suspended for that purpose, said resolution was adopted. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 59, negative 2; for the vote see Appendix I, roll call 177].

No. 7, article on the judiciary, was then taken up and read the third time. And the question having been put upon the passage of the article, it was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 46, negative 17; for the vote see Appendix I, roll call 178].

The convention then resolved itself into committee of the whole for the consideration of No. 16, article on exemption, Mr. A. G. Cole in the chair.

Mr. Larrabee offered a resolution to precede the article, providing for a separate submission of it to the people. He said that he trusted that the convention would be willing to bear him witness that he had not infringed upon their patience by making long speeches. It was not his intention now to break through his habit in this respect. Even if he were anxious to make a long speech, se-

vere indisposition would prevent him from doing so. But he could not let the occasion pass without recording his sentiments as cordially in favor of the proposed measure. He was aware that there was a wide difference of opinion upon this subject and while entertaining the highest respect for the principles set forth in the article, he would be the last one to cast any imputation on those gentlemen who had favored the provision in the bill of rights and who thought they had attained the desired end by that provision. He differed from those gentlemen altogether in opinion.

What is it that the people ask? Is it a new principle? Is it to be sneered at as *progressive?* Is that all the argument against it? Yes; that is all. It is a progressive measure and does not tally with the old standstill notions of the past.

But this is not in fact a new measure. The people ask only that the same privileges may be extended to them that have hitherto been monopolized by the monarchists and aristocrats of the mother country and of Europe and by the bankers and monopolists of every clime. Let us refer to the history of those countries and we shall find them the most stupendous system of exemption that can be imagined—a system sanctioned by parliament, based on hereditary rights, and developing itself in the system of entail. The property of the rich and the noble and the powerful was tied up so that the law could not reach it.

I appeal (continued Mr. Larrabee) to the representatives whom I see around me here from oppressed and downtrodden Ireland, and ask them whether in that unhappy country the principle of exemption has not been monopolized by the highborn, the titled, and the noble. What has been the effect of this monopoly? The people have been oppressed, broken down, and ruined. The people now ask to come in and partake of this principle. They ask of us to give them a portion of ground on God's footstool which they can claim as their own, and not be liable to lose it through the insidious snares of monopolists or by the executions of bankers and usurers. They ask that their homestead may be secured to them and their families. This idea of exemption for the people is startling in the ears of the standstill party. This encroachment frightens them. But the principle of progression is abroad and working in the minds of the people, as in times of old when the same principles wrested from the hands of John of England the Magna Charta. The people are coming up and claiming their rights.

I well remember (continued Mr. Larrabee) when in the city of New York a poor, humble Quaker first dared to enunciate certain great truths to the people. That man was William Leggett. How were those principles received? His arguments went abroad through the land and were sneered at as visionary and progressive. But at last they were triumphant. Look across yon crowded thoroughfare where the walls of old Tammany Hall are reared as the resting place of Democracy. An excited crowd is rushing up to claim the rights to which they were by nature entitled. They find the hall already occupied by the monopolists who have come in at the back doors. One of them already occupies the chair, but he is obliged to yield it to the enthusiastic friends of equal rights. The monopolists and exclusives have a plan reserved to provide for this contingency. The lights are extinguished and a sudden darkness covers the hall. That was the moment of triumph for those lovers of darkness; but the triumph was of brief duration. In an instant a thousand lights flash in all parts of the spacious saloon, borne aloft by living, breathing chandeliers, and the meeting goes on under the control of the Locofocos. The principles there advocated by these true-hearted men are the very principles now advocated by leading Whigs in this hall from the counties of Rock and Grant. You, gentlemen (turning to Messrs. Rountree and Whiton), you are Locofocos, and this principle now before the convention is one which you are bound to support.

What argument is urged against the principle of exemption? I have heard of none. All admit it to be right and just in itself. Why, then, should we satisfy ourselves with a mere recognition of the principle? Why not let the thing itself go abroad throughout the land, and let each poor man throughout the Union say, "There is one state to which I can go where I shall escape oppression—where my inherent rights will not be trampled upon—where my family will ever have a home, let disease or accident or what will come." Incorporate this principle into the constitution and it will be the most glorious Magna Charta that ever was exhibited to the world. The constitution is a good and noble one without it; but with it the world will not know its equal.

Mr. Larrabee said that he wished to impress upon the convention that this was not so new a principle as gentlemen would have us believe, though the demand for its establishment came from another quarter. But if it were, that would be no argument

against it. When it was proposed to reduce the term of the judiciary, it was brought up as an argument against the measure that long terms were established by usage and should not be changed. There was no force in such arguments. We see progression all around us—in inanimate nature, in the mineral state, in vegetable life, from the humblest herb to the tallest tree of the forest; in animal existence, from the lowest animated creature to man himself, from the lowest angels to the throne of heaven. The principle was one which must take hold of the heart of every man. The rich and powerful, who walked abroad with the proud consciousness of being beyond the reverses of fortune, alone might disregard it. It was founded on immutable principles of right and must prevail. If, then, this principle was founded in justice and right, let us fully recognize it and lay it before the people, to be incorporated as an inestimable privilege in the constitution of our state.

Mr. Beall made a few remarks in favor of the amendment.

The question was then taken on the amendment, and it was adopted.

Mr. Kilbourn proposed to amend the article by striking out the words "other and further" in the first line of the second section. In support of this amendment Mr. Kilbourn said that he thought the advocates of exemption ought to accept of it. It left the matter discretionary with the legislature, and if it was adopted he would move to amend further by striking out the first section of the article, which was entirely legislative in its character. After specifying a certain amount of property to be exempted, the article went on to make provision for the legislature to adopt such other and further exemption as they should see fit. If his amendment were adopted, the article would then be a proper constitutional provision and would not be encumbered with surplusage. The article as it stood was like this: There shall be a certain amount exempted, and the legislature may go on to exempt as much more as they see proper. It fixed no limits on the power of the legislature in this particular. The principle of exemption was correct. The only question was the limit. Where should it be, and how much? Some fundamental principle should be laid down in the constitution and the details left to the legislature. If a limit were fixed, it might be found to be a wrong one. Public sentiment might demand more or it might possibly demand less. Why not leave it to public sentiment to control the details? This had been the doctrine of the con-

vention all through. He could see no necessity of submitting this article separately to the people. There was no fear but that a majority of the people would control the matter. If the principle were adopted in the constitution that there should be no exemption, the people would not adopt it. The gentleman from Dodge (Mr. Larrabee) was right in his position that progression was the order of the day; and therefore they ought not to attempt to legislate today for the state of things which might prevail some years hence.

Mr. Beall spoke.

[On the motion of Mr. Kilbourn to strike out in the second section the words "other and further," Mr. Judd said that he was sorry, extremely sorry, that the gentleman from Milwaukee had taken upon himself the part of executioner upon the "poor" man's article. The gentleman had, however, chosen his own ground; he had taken his position; and he had, moreover, declared his intention, if the present motion prevailed, to follow it up by a motion "to strike out the first section in the article." Now, sir, if the gentleman has determined to kill this article—if he thinks it his duty to perform the office of decapitation, and thus to distinguish himself as an "operator"—he must be permitted to tell him that in his judgment he had proposed to perform the operation in a most unskillful and unsurgeonlike manner. He (the gentleman from Milwaukee, Mr. Kilbourn) proposes, first, to mar this second section by altering so as to destroy its force and effect and render it perfectly ridiculous. It did seem to him, said Mr. Judd, that the proposition of the gentleman, and more especially his manner of accomplishing his object, was, as he had already said, very unskillful indeed; it was like a public executioner coming to his unfortunate victim and saying, "It is my duty to perform the last office upon your body by decapitation; it is a terrible and severe operation, surely, but it must be done. I therefore propose to perform it in this manner. I will first amputate one of your legs by way of showing you my skill and proficiency in the art, and then I will proceed at once to the grand operation of decapitation, which is the main object that I have in view." What man in his senses but would shudder at such a proposition! How inhuman and unchristianlike!

No, sir, if this article must be defeated, if sound policy justifies it, and if the gentleman (Mr. Kilbourn) must stand forth conspicuously in the front rank of its opposers, let him come direct

to the charge—either make his motion to strike out the first section of the article, which would be a fair, straightforward, open, and manly opposition—or he might reserve his motion and vote directly against the article itself, which would equally effect his main object, to wit, the defeat of the proposition.

Mr. Judd said that he hoped and really would beg gentlemen to give this article a fair chance and allow a direct vote to be taken upon its merits; and for that purpose he entreated them to negative the motion now pending. He would not now discuss the merits of the main question, but would reserve his remarks upon that point until that question was more directly under consideration. He would close his observations by again requesting the convention to vote down the pending motion and meet the article directly upon its own merits, and then, if it was decreed that destruction was to be its fate, let it have at least the small boon of a genteel decapitation, and not, in this way, first mutilate by cutting off a limb here and lopping a branch there, and then end by the flourish of a grand operation. Give us a direct vote.

The motion of Mr. Kilbourn having been lost, and the question being on agreeing to the article as reported by the committee of the whole, Mr. Judd said that every advancement or progress towards improvement—whether in science, art, law, physic, or in the social relations of man—had in every age, under all circumstances, and in every condition in which man was known to exist met with fierce, determined, and uncompromising opposition. This assertion was supported by all history and was confirmed by everyday experience. The opposition to this article, which he had before denominated the "poor" man's article, was not unlooked for or unexpected by him. On the contrary, he was aware from the day when this subject was first introduced into this convention that it was destined to meet in every stage of its progress determined, unyielding and, he would say, uncompromising hostility; and the gentleman from Walworth (Mr. Estabrook) had at that early day taken occasion to inform the convention that he "should oppose this article in all its phases, from the cellar to the garret"; and true to this declaration the same gentleman had just taken his seat after having delivered a most powerful philippic against it.

In order to prove that all new propositions had met similar opposition he need not go back to ancient history for instances. He would only call to mind a few prominent cases of recent date.

Some years since—he thought about the year 1806—the law defining the widow's dower right was passed by the legislature of New York, which law was vetoed by the council of revision, then consisting of the governor, chancellor, and the judges of the supreme courts; Morgan Lewis then being governor, and Chancellor Kent and other great jurists being also members of council. Yet these men rejected that law mainly because it was an innovation of old established usages! The law went back to the legislature and was passed by a two-thirds vote in each house. And now where is the man to be found who will not subscribe to the wisdom and propriety of that law? Or who would propose to repeal its wise and wholesome provisions? No man will do it, sir. Everybody approves it.

Take the case of the immortal Franklin when he proposed to extract the lightning from the clouds of heaven and to bottle up the fluid! How he was ridiculed and hooted as a wild, chimerical, half-crazy fanatic, whose proposition was not worthy of a serious thought or sober consideration! And yet, he succeeded. And who at this day doubts its practicability?

Sir, said Mr. Judd, when he was but a small lad, he recollected of hearing the people talk (for it was too early for him to read much) about the first law in relation to exemptions, which really exempted to the head of a family in the state of New York one cow, two hogs, two sheep, six chairs, six knives and forks, and necessary clothing, beds, and bedding. Then it was said that "everybody would be ruined; no man could ever collect his debts"; and all the opprobrium which could be gathered from every possible combination of language was thrown upon that law and its friends. But, sir, the law succeeded; and the principle of exemption from that day to this has been steadily on the advance. Indeed, this principle has become so well settled and firmly established that none can be found at this day who will oppose it. No, not one!

Again, look at the onward progress of the "great measure" of the nineteenth century—he meant the laws forever "abolishing imprisonment for debt." How, he would inquire, was the proposition met with when it was first seriously agitated? He well remembered the time (as he presumed many other gentlemen did) some fifteen years ago, when this great measure of advancement in human happiness—and of civilization, he would add—was first perfected in the Empire State by legislative enactment. And need he now

tell gentlemen of the violent, unceasing, and uncompromising opposition which it encountered? Surely not! It might not, however, be improper for him to assert—which he did without any fear of successful contradiction—that no public measure which had been agitated during the last forty years had created so great a sensation among the people! He would not then repeat the expression which he then heard from the opposers of the law; it was sufficient to say that it did at the time pervade the whole community. He participated in those feelings himself; but upon examination he found that the opposition had no ground upon which they could stand consistent with the eternal principles of liberty promulgated and advocated by Thomas Jefferson. The nonimprisonment law was adopted, became popular, and has ever since proved satisfactory—so much so that similar laws have been passed by almost and he believed every one of the states in the Union. Now, sir, where is the man—he would repeat it, where is the first man to be found in the whole country who will—nay, who dares—openly oppose the provisions of this humane and philanthropic law? No instance can be found!

The old acts of corporations creating monopolies of every kind have been of late almost entirely discountenanced and repudiated for like reasons, because from their nature they are inconsistent with the principles of justice, equity, and the common rights of individuals. He might call to mind many and innumerable instances of a like character to fortify his position; but it was unnecessary. He would advert to one prominent case while on this branch of the subject. He alluded to the time when the genius of Fulton first proposed to apply the power of steam to navigation. How was he treated? The history of the times affords abundant testimony of the contumely, ridicule, and "all manner of reproach" which his proposition received from the public; and yet it succeeded and is now the wonder and admiration of the whole world.

Being aware, said Mr. Judd, of all these facts in relation to all new propositions of general interest which had been made in other times and as applicable to other subjects, he was not disappointed at the opposition which the present article had encountered here; he had expected it and therefore was not surprised. While he said this he must take the occasion to say that he was surprised to witness such a determined and obstinate re-

sistance to the passage of the article in its present shape. All the arguments of gentlemen against this article were against its merits—in opposition to its principles—as if the propriety of some exemption was not now universally admitted and recognized by every state in the Union, if not in every country in Christendom. It did seem to him that any discussion upon the main principle of this article was totally unnecessary and useless in the present position of the question. He would therefore pass over that part of the subject and confine his remarks more closely to the immediate question at issue.

Mr. President, what is the question under consideration? If he understood it, it was proposed by the article before us "to submit to the people, at the same time when the constitution shall be submitted to them, a separate article, to be voted upon separately, containing a provision exempting from forced sale the homestead of any family and other property from forced sale on execution, such property in the aggregate not to exceed five hundred dollars." Now, sir, what are the objections to this? The gentleman from Walworth (Mr. Estabrook) says "it has no affinity to a constitution"; is "purely legislative in its provisions"; and complains of the "wonderful pertinacity of its friends." Is this true, sir? Has this provision "no affinity to a constitution"? Why did the gentleman vote for an article the other day, declaring that the judges of the supreme court should receive each a salary of fifteen hundred dollars a year? Was not that article "purely legislative" in its character? Again, why had he labored not many days ago, for several days in succession, in this convention, to frame a "bank article" and finally had abandoned the effort because the convention could not agree in its details? And why had the same gentleman reported as chairman of a committee a long article on "education and schools," which had been mainly adopted upon his recommendation? Were not all these articles more minute and detailed in their provisions than the one now before the convention? And if so, how does it happen just now—near the close of this convention—that the gentleman has all at once discovered, upon the moment, as if it were "made to order," that this article, this humane provision calculated and intended to protect every man from sudden calamity, from destitution, from want and misery, to which everyone is exposed, "has no affinity to a constitution"?

Surely the gentleman's discrimination was nice—even fastidious, he would say.

In his opinion, Mr. Judd said, this article was formed and fitted, peculiarly so, for a constitutional provision; it was not only an affirmation of a great principle, but was also a clear, plain, distinct declaration or reservation of personal rights and securities near and dear to all. He did believe the people expected such a provision would be inserted in the body of the constitution itself; they had petitioned for it by hundreds and by thousands. But the gentleman has said it would "defeat the constitution most certainly, if put into it"; and other gentlemen had said the same thing. To remove this objection the proposition had been changed so as to make the exemption a separate article, and in that form to submit the question as a naked proposition directly to the people for a vote, disconnected from any other question. This course on the part of the friends of the homestead exemption was fair and magnanimous; and he was surprised to witness the pertinacity of those who were opposed to the principle of this article in opposing a separate submission. They say that "a large majority of the people will oppose it." Well, sir, if this be so—if such be the fact —then where is the danger of taking a verdict from the people? We and the friends of the article say that in our opinion a majority of the people are in favor of this measure. They deny this; here, then, we are at an issue. How can this issue be decided? Is it not fair, equitable, and every way just to submit it to the people for their decision? Indeed, is there any other manner by which it can be decided? It did seem to him, if ever a just and reasonable offer was made, this was one. If the people said no, he for one would be satisfied; the gentleman from Fond du Lac (Mr. Beall) had said he would be satisfied; everybody would be satisfied. We say amen to this decision. And who would say no when the people say yes? Certainly, sir, he would not. He always had great respect for the people; and indeed, he could hardly imagine a case where he would not rest satisfied with their opinion! Most assuredly so in a case like the one under consideration.

The convention have declared in the first article adopted by them (the bill of rights) that "all men are born free and independent"; and this was the basis of the great principle of democracy, the essential difference between our government and a monarchy. The first deduction to be drawn from this principle was this: that

every man, being "free and independent" by nature, was himself a component part of the government under which he lived. Hence all our institutions should be based and founded upon public opinion, wherever and whenever that opinion could be ascertained. Whence, then, could have arisen the opposition to the article? And especially, how came that opposition from gentlemen professing the Democratic creed? The gentleman from Milwaukee (Mr. Kilbourn) stood foremost in this opposition; and the gentleman from Walworth (Mr. Estabrook) himself claimed the second rank. The last gentleman had declared in his place here that "if the gentleman from Milwaukee (Mr. Kilbourn) was in the front rank, he desired himself to have the second place in opposition to this measure." And he had exhausted his imagination as well as the English language to find terms of opprobrium sufficiently strong in which to express himself; and he (Mr. Judd) would confess that in this report the gentleman had been extremely successful. He had spoken of it with "loathing and disgust" and had finally capped his climax by denominating it "a plague spot."

Mr. President, said Mr. Judd, whence all this denunciation? Why characterize this measure in this manner? Was the simple proposition to submit the question to the people to be voted upon separately disconnected from the body of the constitution so "dreadful" to the gentleman's sensibilities? It did seem to him that the charge of "pertinacity" as applied to the friends of this article came with a very ill grace from that gentleman. Why not treat the matter coolly, dispassionately, and without excitement? But, sir, the truth is the gentleman is himself laboring under a great —and he would add unaccountable—prejudice upon this subject—so much so that he feared the gentleman had not examined this question with his usual coolness. He must be permitted in reply to these denunciations to tell that gentleman that when he called this proposition "a plague spot" he had better reflected that it was comparing this humane measure, petitioned for by a vast number of persons, with one of the foulest, most disgusting, petechial discolorations of the human skin ever described by man. Let the gentleman have the benefit of his position. He (Mr. Judd) would tell him that there was a spirit abroad among the people upon this subject which could not be crushed or put down in this way, and he would add—let the gentleman beware lest this "plague spot" should hereafter rise up in judgment against him! He repeated

the assertion—let him beware! When a large portion of the people demand a reform, they will effect it sooner or later.

Again, said Mr. Judd, upon what foundation do the opponents to this article stand? Are they not placing themselves in direct opposition to the people? It did seem to him so and he could not for his life perceive any escape from this conclusion. The gentlemen (Messrs. Kilbourn and Estabrook) had shown upon this occasion, he would admit, great courage and firmness—qualities which he always admired. And while on this subject he would say that he had for a long time thought, for himself, that he possessed a reasonable share of courage and he still hoped, upon all occasions where his honor or his interests were infringed, he should be willing to manifest a suitable degree of this attribute to maintain his rights properly. But there was one crisis to which he was not adequate. When he heard the distant murmurings of the people, like the deep and rumbling intonations of thunder; and when he saw the gathering mists of blackness in the far-off horizon, he confessed that his heart quailed within him and his courage failed. He could not meet such a shock. And he would not expose himself to its fury.

Mr. President, let this question go to the people; let them speak their own judgment, and all will be well. If they pronounce in its favor, let it become the law of the land; if they are against it, let that end the agitation of the matter for the present. A great measure of reform cannot be prostrated by unreasonable nor by prejudicial opposition. If this proposition should be adopted and become a part of the constitution, we shall then have taken a high and proud stand in the nation; we shall be able to point to the page and the letter in the fundamental instrument upon which our government is founded, which secures the "greatest good to the greatest number." We shall have secured to every man who may be able to procure a foot of our soil a place where he can plant his vine and fig tree and where there is none to make him afraid. *Rock River Pilot,* Feb. 16, 1848.]

The committee then rose and by their chairman reported progress thereon and asked leave to sit again. Leave was granted.

On motion of Mr. Richardson the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

The convention resolved itself into committee of the whole for the further consideration of No. 16, article on exemption, Mr. A. G. Cole in the chair.

Mr. Kilbourn renewed his amendment (striking out the words "further and other" in section 2).

Mr. Larrabee said he hoped the committee understood the object of the mover of this amendment. He had declared his intention to follow it up, if it prevailed, by striking out the first section. The adoption of the amendment would be a deathblow to the whole article.

Mr. Vanderpoel: As a member of this constitutional convention I should have felt willing to cast a silent vote, were it not that I deem the question of such importance that I, as a friend of the measure, should not feel satisfied were I thus to be a silent spectator of what I conceive to be one of the most humane and just articles that we have in the course of our labor had under consideration. It has been well said by gentlemen upon this floor that this is an age of advancement and progression. The forms of government which have for a long series of years been naught but those of oppression upon poverty, made so by the operation of those laws, are tottering to ruin; and our duty to our country, to the embryo state of Wisconsin, and to the welfare of our citizens and their future prosperity should cause that searching spirit of investigation as to the best measures of securing to the great mass of our population the most certain means of avoiding the condition of abject poverty in which we now behold the degraded millions of Europe.

Mr. President, I am aware that I may here be met by those opposed to exemption laws with this argument: that we are a different nation and a different people; that we have implanted deep in the hearts of our citizens a fund of general knowledge, which will in all future time guard and protect the innovation and influence of concentrated wealth, with all its power and influence, from crushing under its golden Moloch the toil and sweat of industry. I shall also be told that there is no danger of an innovation of this kind, from the fact that since the veil of darkness was lifted by enlightened and liberal legislation from the cruelty practiced upon the unfortunate but not criminal poor, by dealing out to them what was then considered a boon of doubtful policy, which at that time

was looked upon by many of our citizens as an innovation upon the established customs and usages of society with jealousy, to wit: the abolition of imprisonment for debt, our course has been upward and onward; that all legislation in the different states of this Union since that period has advanced in the progress of liberality and humanity; that therefore we need not meddle with the subject, or if we do, but barely recognize the principle in our fundamental law—that the efforts of many states of the Union at the present time to modify and change the existing laws should be permitted to pass by unheeded by us till the experiment is well tested in those states, and then we can profit by their example.

I am opposed to taking this view of the subject. I am opposed to the principle of waiting to do what almost all of our citizens acknowledge to be just and right, till others have set the example. This principle is in direct opposition to the common and almost universal course which has been pursued by this body since the commencement of this session. In many things embraced in the constitution which we are about to sign and send forth to our constituents for their consideration to examine and by their votes either approve or reject, we have made innovations upon established customs and usages. We have stripped the principal executive officer of our government of almost all his appointing power. We have made an elective judiciary. We have gone far beyond many of the states on the subject of the elective franchise. We have established a system of banks and banking which leaves all the power as to their creation and existence in the hands of the people, where it of right belongs, who are in fact the government. Shall we, after having done all this, when we approach this subject, when we approach the threshold of the great sanctum sanctorum of the rights of those who are liable to the rod of oppression from the power of wealth and who are in the accents of supplication depending upon their servants who represent them on this floor to establish those wholesome provisions which will secure not only to those upon whom fortune has already cast her frowns, but upon all our citizens, who are at all times liable to be reduced from wealth to poverty, from affluence to want, a certain security against the tempest and the storm of change and speculation, against the overreaching grasp of unfeeling wealth, a safe retreat secured by our fundamental law—I say, shall we then hesitate to fix firm as the pillars of our government, as enduring as may be the constitution we are

now framing, this hallowed, this God-like provision, if adopted by the people? I may be told that efforts lately made by some of the states of the Union to exempt the homestead from forced sale on execution having failed, we should be cautious—we may step too far—under the considerations we had better wait till some convenient season and then ask of some future legislative body what we dare not now grant the people. My course and my vote upon this subject, Mr. President, may differ from those of my colleagues. It may be different from a majority of the votes cast upon this subject by the members of this house; but if I had certain knowledge of that fact, if I could with the eye of intuition look to the record of the final vote, it would not change my action on this subject. I shall at all times act upon what I honestly believe to be correct in principle and upon those measures which I am satisfied will prove of utility in practice.

Of this much I am fully convinced—that the principle of a liberal exemption is now taking deep root in the public mind, and that if one of a liberal character, equal in its operation upon all classes of society, were engrafted in our constitution, it would not in the least endanger its adoption but on the other hand would augment the vote in its favor. It may be asked why this anxiety. Why do the friends of exemptions urge this matter? There is at present no danger of the inroads of wealth or oppression upon the poor or those in more comfortable circumstances. Land is plenty, and the price low—millions of acres not yet settled upon. There will be ample time to establish the law for years to come.

Mr. President, from such conclusions I beg leave to dissent. When I cast my mind in retrospect and look upon the condition of millions now laboring to sustain a miserable and wretched existence, which by almost every mail that reaches us brings the sad wailing from the green isle of the ocean that their attempts are in many instances fruitless; when I contemplate the starving mother, the orphanized children, or the broken-hearted father, all tottering on the verge of the grave, with no hope or expectation of relief from the millionaires of England, made so by the sweat and toil of those now suffering under their oppression; when I contemplate the difficulty now existing in the old states of this Union to establish the principle of homestead exemption surrounded by the strong, unrelaxing influence of wealth—and when I look upon our own favored territory, with the present equality among our citizens, I look upon

this as the proper period to establish firmly upon fixed principles the doctrine of exemptions. Mr. President, the vast West is soon to be filled up by the overwhelming tide of immigration. The oppressed of other climes are constantly migrating, dotting our openings and prairies with the rude cabin of the pioneer; and if at the present time the oppressed of foreign climes, the poor from the old thirteen states of this Union, can find a home among us, yet that period will soon arrive when the tide of immigration will roll back upon us. Then wealth will, as it has in other lands, concentrate in the hands of the few; and unless laws of a liberal character, securing to the debtor and his family the means of a sustenance, be passed, we shall then see that our country will be a land in which crime will be abundant, resulting from poverty oppressed. The progress is onward. The grand reform in view by the friends of liberal exemption laws is certain to be accomplished; and when I contemplate that but as yesterday in the grand Empire State, the home of my youth, laws existed forcing the honest but poor debtor from his family to share the cell of a felon for the crime only of being poor; when I look back to many of the inmates of the county poorhouses in that state and find widows and orphanized children become their occupants, made so in many instances by those laws of oppression; when I look upon the present efforts made by many of the states to effect this grand reform, I could wish that the state of Wisconsin might enter the sisterhood of our government with the grand and imposing spectacle inscribed upon her fundamental laws—that the poor, the honest, the unfortunate debtor has a home.

Mr. President, I might here stop, having briefly given my views and the reasons that will govern my vote; and in conclusion I will say to those who are opposed to the principle of a liberal, equal exemption, that in my opinion a few short years and they will by the voice of the people be roused from their lethargy; and if they adhere to their opposition they will be looked upon in the same light that we now contemplate the character of those who before us adhered strenuously to the law of imprisonment for debt. If, sir, we would make our citizens honest and respectable; if we would put one of the most salutary checks upon pauperism and crime; if we, in a word, wish the great mass of our present and future generations to be elevated to a position beyond oppression and want, make a liberal exemption law. I, sir, look at the lone star of Texas,

and I could almost wish that I were enrolled under her sublime, her grand laws upon the subject of exemption, as one of her citizens.

And, sir, in conclusion, I hope that the members of this convention will look upon this subject without that feeling of prejudice arising from the defeat of the old constitution. I, sir, should have been happy to have seen this provision engrafted in the body of our constitution, but the friends of exemption do not ask it—they do not expect it. All we ask is that it should be submitted to the people as a separate article; and if a majority of the electors of this territory should vote against it, then we bow in submission to their mandate till a more auspicious day shall dawn upon Wisconsin. And, sir, if this article of separate submission should be adopted, who, I ask, is not ready to submit and bow to the public will? I, sir, shall record my vote in its favor and I shall look back to that vote in future years with a high degree of satisfaction, believing that vote to sustain principles of humanity, of justice and right —that principle which is calculated to prevent the grasping influence of wealth from swallowing up in its vortex the home of the poor. Adopt it, make a separate submission, and I, sir, feel as though rising generations yet unborn will enter the capitol of this state, and in opening the record of this convention left for a history of our doings in this body, they will venerate the names that are subscribed in its favor, and will view them as benefactors of our race.

Mr. Chase said he would not waste the time of the convention by any lengthy remarks, but he must bear witness against this amendment. If adopted, the first section of the article would be rendered null, and this would destroy the force of the whole article. The vote on this amendment, therefore, was a test vote on the article. The article now provided that a homestead not exceeding five hundred dollars in value should be exempt from forced sale. But the amendment would leave it wholly to the legislature to make any exemption or not. Now, no gentleman present, if in the legislature, would vote against an exemption of five hundred dollars to every family, so that in respect to the amount it probably made no difference whether the sum was specified in the constitution or not. But it was proper to put it there, in the fundamental law of the land, as a declaration that every family should be secure in the possession of an adequate sum of either real or personal estate for its subsistence. It

was proper, moreover, because real estate had never before been exempted, and it was necessary to provide for such an exemption in this solemn manner or it probably would not be made. Mr. Chase said he would vote for the article at any rate. If that was lost, then he would offer another proposition which he did not like as well, but which would be the next best. He had voted against the provision in the bill of rights and would do so again. It meant nothing. It "recognizes the right to an exemption" but does not impose any obligation on the legislature to carry it out. He wanted something done which would be effectual. Gentlemen all said they acknowledged the correctness of the principle of exemption Did their acts conform? All the advocates of exemption now asked was that they should provide for an exemption of five hundred dollars and then submit it to a vote of the people to say whether it should be incorporated in the constitution or not. How could they claim to be in favor of the principle and vote against so slight and guarded a plan of exemption as this?

Mr. Estabrook said he was one of the committee to whom this subject had been referred. He was one of the two who had dissented from the majority report. It seemed proper, therefore, that he should give his reasons for opposing it. He had listened with great interest to the champions of homestead exemption and he believed they had brought forward on this floor all the reasons which could be urged in favor of it. But those reasons had utterly failed to satisfy him, either that the measure should be established in the constitution or that it should be submitted separately. This convention was not a legislative body and it travels out of its proper sphere when it undertakes to legislate. Our business was to form a constitution; and by that he understood an instrument which divided and apportioned out the powers of government into their separate departments and gave them their solidity and subordination one to another—which constituted the state, in short. To this naturally and properly pertained a bill of rights, declaring and defining in a broad and general way the rights of the people. Now, he asked, what affinity had that measure of homestead exemption to any of the functions of government? Did it relate to the organization of the judiciary, or executive departments, or legislature? Not at all. The proposed article was designed only to bind the legislature to legislate in a certain way. If it had no affinity, then, to the functions of government, had it any to the proper idea of a bill of

rights? He thought not. Instead of being a declaration of rights, the very object of it was to step between individuals and deprive them of their rights and their legal remedy when those rights were infringed. It was a declaration abrogating the natural and inalienable rights and duties of man and intended to prohibit the legislature forever from recognizing and enforcing them. Then it had none of the peculiarities of a constitutional provision and certainly deserved no place there.

Mr. Estabrook said he had been surprised at the pertinacity of the friends of this measure and had sought the reason for it. Was there any public exigency at this time which demanded it? Were debtors now so generally oppressed in the territory that it required this extraordinary means to save them from ruin? By no means. In the course of his practice he had never known more than three sales of real estate on execution in his county, and these were with the assent of the owners. He had never known of a forced sale of a homestead in the territory. What, then, was the necessity of this measure? There was none. And if it had not been foisted into the old constitution by some indiscretion, the man who should stand up here and advocate such a monstrous proposition, so uncalled for, would be considered a mad man. That old constitution was the whole cause of the evil. It had familiarized the people with this mad absurdity, from which their natural instinct and cultivated reason alike revolted at first; and some of the consequences had ensued which the poet mentioned as the result of seeing the monster vice too often. Those who from any of the thousand reasons which might have operated on them were induced to support that old constitution were placed in a position where it was necessary for them to defend the exemption article, as that was the principal point of attack. They became accustomed to view it in a favorable light—to palliate its faults—to argue in favor of it—and thus, though it might have seemed a frightful monster at first, yet,

> Seen too oft, familiar with its face,
> They first endure, then pity, then embrace.

Their pride and their ambition, too, were committed in favor of it, and the ridicule and contempt they met on every side made them finally almost regard themselves as martyrs for the truth. This was the cause of all these efforts now to put another such article in the constitution. These efforts were the relics of that ex-

citing campaign—the headaches and heartaches of that drunkenness striving to "propagate their states." Did not every gentleman know this? Was it not the friends of the old constitution who were now so zealous in this matter? Was it not known that the petitions, which had been sent in here so thick on this subject, had been got up by the friends of the old constitution here, and sent abroad to their fellow laborers in that campaign for their signatures? These things were too evident. Mr. Estabrook said he had received letters from his constituents in regard to these petitions, stating what efforts were made to procure signatures to them, and asking if it was necessary to send in any remonstrances. He had told them it was not—that there was no danger of any such article being inserted in the constitution. Had not this measure been once passed upon and firmly rejected? It was well known that this was the point on which the whole battle was fought. It was known that the insertion of that article in the old constitution had caused Marshall M. Strong to resign his seat and to lead off in the opposition which was immediately excited against it. Then why was it urged on us again? Would it not be received as an insult by the people, after they had so emphatically expressed their opinions upon it but a short time before, to have it forced on them again?

But, Mr. Estabrook continued, we had been told this was a progressive measure. He had been amused by the remarks of the gentleman from Dodge (Mr. Larrabee) claiming this as a progressive measure and yet saying in the same breath that it was no new thing. But he had been surprised at his argument. He had said that the perfection of exemption had existed in England in the laws of primogeniture, etc., and now was advocating the establishment of the same system here. Truly, if this was progressive, it was progressive backwards, and we should soon be called upon to pass laws to prevent people from selling their land at all, as had been done in the line of progression in which the gentleman was trying to lead us. He was trying to lead us backward, through the history of England, and the goal to which his progression tended would be found in full glory in the times of William the Conqueror.

If this was the gentleman's progression, he (Mr. Estabrook) would not follow him. He would go in the other direction. But the gentleman from Fond du Lac had told us that those who did not follow in this track of progression would be burnt up in the fiery furnace of public indignation, and he had singled out the

gentleman from Milwaukee (Mr. Kilbourn) as the principal offender and told him he would be the first to be consumed in it. If he is to be the first victim (said Mr. Estabrook) then let me be the second. I am not afraid to brave this furnace. I am not to be thus terrified. I stand on my own bottom, determined to adhere to what I consider right, and willing to abide the consequences. I scorn such threats and the motives which induced them.

The gentleman from Jefferson (Mr. Vanderpoel) had said this question should be left to the people, as the bank question had been. If no article were inserted in the constitution at all, would not the question be in the hands of the people fully? Most certainly. But if we should place it in the constitution, or append it as a separate article, and it should be voted down, would not that be an instruction to the next legislature not to provide for any exemption? Certainly it would. And then the friends of exemption would be worse off than if they had done nothing but declare the principle in the bill of rights, as is done now. But in what position would it place the friends of the constitution who were opposed to exemption to submit the article separately? Many, and he for one, would not vote for any constitution which contained an exemption article. How could they tell, in voting for the constitution, whether they were voting for a constitution with an exemption article in it, or not? Why should they be forced into such an alternative? Why, when everything else was fixed, should this be left open? But the great question was whether we should put this article in the constitution or provide a way of putting it in; or, on the other hand, leave it wholly to the legislature. This was the question, and the advocates of exemption evaded it. They said the measure was a good one and therefore it should be established in the constitution. There was no logical consequence in this. Let them prove that it is a matter of constitutional law before they ask us to put it in the constitution. But this they could not do. It was purely legislative. He believed there was no man in the convention who would arrogate the ability to establish a law of this kind in the constitution, which would meet the wants of the people ten years hence better than one framed by a legislature elected by the people at that time. The subject was new. The views of the friends of the principle could not be reconciled among themselves; and no law could be framed which would give satisfaction even now. It was folly under such circumstances to attempt to legislate for all future ages. These

were the reasons which had induced him to oppose the placing of this plague-spot in the constitution or countenancing it in any form, and he hoped they would be weighed by the convention and their weight, if any, allowed in making up their verdict.

Mr. Beall spoke.

Mr. Larrabee in reply to the gentleman from Walworth said that gentleman had construed his remarks unfairly. He had charged him with saying in the same breath that the homestead exemption principle was an offspring of progress and then again that it was no new thing, and thus tried to make out a contradiction. I said (continued Mr. Larrabee) that the idea of exemption was no new one, but the practical measure of exempting the home of the poor man was new and progressive. It was the same kind of progress as that made at the American Revolution—the same as that made in the election of judges—the abolition of imprisonment for debt. It was no new idea, but a new thing in practice and in its present application.

Mr. Jackson said he felt bound in justice to himself and his constituents to say a few words on this subject, though he had at first intended to give only a silent vote. We had been told that this homestead exemption proposition was progressive, and our sympathies had been appealed to, to induce us to go for it. Yes, and our understandings, too; for we had been given to understand, plainly, that opposition to it would be political death to us inevitably. Now he hoped these gentlemen would not hurry us out of the world in this unceremonious manner. He hoped they would wait till we were really dead before they undertook to bury us. For his part, his constituents well knew that he had opposed the old constitution and that one reason was on account of the exemption article. His own town gave a third more votes for the Democratic ticket last spring than the constitution received at the same election. And he received a larger vote in his town at the last election than any other man on the ticket. This proved that opposition to exemption was not death to a man in his county. The gentleman from Fond du Lac had read a letter from a gentleman from Salem, in Racine County, in which he stated that he believed the town of Salem would give fifty majority against the constitution unless it provided for a liberal homestead exemption. That gentleman might have thought so. But (continued Mr. Jackson) I am well acquainted in that town, and I believe the contrary. I believe that town would give a

majority against the constitution if it did contain such a provision. And so would the whole county. The few petitions which have come from there in favor of inserting an exemption article in the constitution it is well known were got up here by a certain zealous class of persons and sent down there cut and dried. It was no spontaneous move of the people of Racine County. It was merely an instance of their good nature in yielding to the importunities of desperate fanatics when they knew it could do no harm.

It had been said we should leave this question open, as we have the bank question. How have we left the bank question? We have tied it up effectually. We have required the vote of two legislatures and of the people at large in two different years, before a bank can be established. Would the advocates of exemption be satisfied with this? No, sir; nor do we ask them to. Leave out this article altogether, and the question of exemption will then be continually in the hands of the people. The bill of rights recognizes the principle and makes it almost obligatory on the legislature to provide for an exemption. This is sufficient—this is leaving it where it should be. I am not (continued Mr. Jackson) an enemy to exemption or to the rights of poor men. On the contrary, I am one of that class, and my interests and sympathies are all with them. I have swung the scythe and followed the plough. I have earned all I own by hard labor. But I would have such an exemption as is compatible with justice—one which will protect the poor man from extremities. I would have the homestead of the poor man exempted, but it is no place for it in the constitution. It should be left for legislation and not be tied up by constitutional provisions.

Mr. Chase said he would correct a false impression which seemed to be abroad in relation to the petitions which had been presented praying for a homestead exemption. He had not sent any such petitions abroad himself for signatures, nor did he believe his colleague (Mr. Beall) had. The petitions from his county were generally written and in different hands. The people there, as was known, were almost all in favor of exemption.

Mr. Vanderpoel said the gentleman from Walworth (Mr. Estabrook) had said that the old constitution was defeated because it contained the exemption article. But he would ask that gentleman what was the objection most talked of. Was it that forty acres were exempted? No. It was the married woman's article and the fact that the exemption was not equal. None spoke against the

principle of exemption itself. We ask now no such article as that in the old constitution. We ask only that an article which exempts but half the amount and is equal in its operation may be submitted to a vote of the people, and if approved by them may be inserted in the constitution. Surely this is reasonable.

Mr. Reed said that allusions had been made to the opinions of the people in the north, from which he came, and he thought the representations were not correct. In his district it was regarded by the Whigs at least as a matter of no particular consequence except as a family quarrel in the Democratic party, in which demagogues of different schools took different means to accomplish their ends. They felt little other interest in it than to hope that the two factions might quarrel over it till, like the Kilkenny cats, they devoured each other. Mr. Reed said that so far as he had heard an expression on this point by people in general at the north, that expression was very limited in favor of a homestead exemption and very generally against it. That was his experience. Other gentlemen seemed to have heard differently. As to petitions, he believed an extraordinary effort had been made to manufacture public opinion in favor of exemption and procure signatures, but with very little success. A meeting had been called in Fond du Lac for this purpose and no stone left unturned, but it had proved a failure. Few attended, and discouragement beset them on every side. It had been said that the people were in favor of an exemption article in the constitution. This he did not think was so. Saying nothing of the Whig press, who were all against it, the most able of the Democratic papers were opposed to it. The Democratic papers at Green Bay, at Watertown, at Milwaukee, and at Southport, at least, were opposed to inserting an exemption article in the constitution. (He here read some extracts from these papers showing this.) Thus it would be seen that the press were against the position of gentlemen here. The opinion was very general that the declaration in the bill of rights was enough—that nothing further was required. He said it was not perhaps proper for him, being a Whig, to interfere in the family quarrels of the Democrats, but he felt inclined to join in the impressive warning of the gentleman from Fond du Lac (Mr.Beall) to the "Old Hunkers" and say, "Beware! beware! for the Young Democracy are after you! The Tadpoles will eat you up unless you place this article in the constitution!" It mattered little to him or his party, however, if they did; but, as

he had said, he would prefer that they should both be used up in the scrape.

Mr. Doran said he could not deny but that there were many in Milwaukee who were anxious for the incorporation of an exemption article in the constitution, but yet there was a vast majority there against it. He had consulted with his own countrymen (the Irish) in his intercourse with them and found they were almost universally opposed to it. Those who were poor said it would ruin their credit. They could not get an article without the cash down or a mortgage upon their houses or, if they had none, the security of some responsible friend. These papers must be made out on every little occasion at great expense and vexation or they could do nothing. Those in better circumstances, merchants and business men, said it would ruin their trade—that it would compel them to be so rigid as to be ruinous upon all business, or else it would place them at the mercy of every scoundrel who might get their goods into his possession. It took away from right the sanction of law, and secured to no man his property if he once let it go out of his own hands. Thus the great body of the people, rich and poor, were opposed to the scheme, and with good reasons, applicable to their different situations. Then certainly we ought not to establish it in the constitution. But the advocates of exemption now say they want only the privilege of submitting the question to a direct vote of the people and that it would be very unjust to deprive them of this privilege. How happens it, then, gentlemen did not entertain the same ideas of justice when the bank question was before us? They were loud and earnest then against according us the privilege they now ask for themselves. They tied up the bank question as they designed to do and acknowledged, so as to make it almost impossible to get a bank charter. With what face can they ask of us what they refused to us in a parallel case but a few days ago? We regard this system of exemptions as proposed as morally wrong and disastrous to the best interests of society, and do not feel called upon to countenance it at all. But if it is to be established, it should not be in the constitution. It was legislative in its character and would require frequent modification. He was willing, however, to fix it as the bank article had been fixed—allow an exemption article to be established after passing through two legislatures—and two votes of the people in different years—and he thought that as the advo-

cates of exemption had advocated that method in one instance, they must be content with it in another.

The committee then rose and by their chairman reported the article back to the convention with an amendment.

The question being upon concurring in the amendment of the committee, which was to insert before the article the following, to wit: "*Resolved*, That the following article shall be submitted when the votes of the electors shall be taken for the adoption or rejection of this constitution, to be voted upon separate and distinct from the body of the constitution. The votes given upon said article shall be deposited in a separate box and shall have on them the words following, to wit: 'Exemption—yes' on those votes in favor of adoption, and 'Exemption—no' on those against the adoption of said article; and if a majority of said votes shall be 'Exemption—yes,' then said article shall form a part of said constitution and be incorporated therein. But if a majority as aforesaid shall be 'Exemption—no,' then said article shall be rejected," and having been put, it was decided in the affirmative. And a division having been called for, there were 33 in the affirmative and 9 in the negative.

Mr. Kilbourn moved to amend section 2 by striking out the words "other and further."

Mr. Judd spoke.

Mr. Richardson wished to ask one question of the advocates of homestead exemption. Do they think legislators hereafter will obey the will of their constituents? If they do, then why not leave the question of exemption to them? They can then get such a law as the people shall require. There is this very serious objection to putting the article in the constitution, that it will create a prejudice against the instrument, and will disgust the people.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 8, negative 58; for the vote see Appendix I, roll call 179].

Mr. Kilbourn moved to amend the article by substituting the following, to wit: "The legislature shall have power to pass laws for the exemption of the homestead of a family and for such other and further exemptions as to them shall seem proper, from forced sale on execution, for any debt or debts growing out of or founded upon contract made after the adoption of this constitution: *Provided*, That such exemption shall not affect in any manner any mechanic's or laborer's lien, or any mortgage lawfully obtained. And *Provided*, further, That any law exempting real estate from such sale shall not take effect until the same shall have been submitted to a vote of the people at some general election and shall have been adopted by a majority of all the votes cast at such election; and when so adopted such law shall remain in force until repealed by an act to be approved by a like vote of the people."

Mr. Kilbourn said that in the course of the debate on this subject several gentlemen had seen proper to refer to his course in very harsh and denunciatory terms and had assumed, notwithstanding his disclaimer, that he was opposed to all exemptions. He had offered this substitute to satisfy them that he was bona fide in favor of exemption. He said he was so in favor of it and desired to submit a proper provision on the subject to the people. The article first presented was legislative in its character, and that was a sufficient objection to it. He wished also to submit the question to the people in such a way as not to embarrass the adoption of the constitution. He wished to have the constitution submitted and decided upon according to its constitutional merits—not as a collection of statutory law. If the convention adopted this amendment, it would be a constitutional recognition of the doctrine of homestead exemption. The article first proposed was inconsistent with itself. It said "a homestead not exceeding in value $500" should be exempt. What did this mean? If the homestead exceeded that sum in value, then there would be no exemption. Now $500 was a very small sum for a homestead. A homestead not worth more than that was not worth much. If any homestead was to be exempted, it should be permitted to be large enough in value to accomplish the object. The article was inconsistent, also, in giving the legislature power to increase the amount after limiting it to $500. Mr. Kilbourn said he was in favor of the principle and in favor of leaving it to the people. His amendment would properly come among the miscellaneous provisions, if adopted; but the committee on revision would attend to that. Gentlemen had inquired why not leave this question to the people, as the bank question was. He was willing to do that. His amendment submitted it to them in almost the same form; and he hoped these gentlemen would not now dodge the issue and oppose it. As to public sentiment, he thought it was opposed to specific exemptions of a fixed amount, but in favor of the general principle. In Milwaukee the people were in favor of just about such a proposition as that he had submitted. This he knew, and he submitted it as an expression of their wishes and, if alone, he would stand up for it. As to the petitions which had been sent in, he thought the expression was not so strong as gentlemen seemed to suppose. They claimed there were 2,000 petitioners, but he had not seen so many, and even that was but a small number from the whole territory. And besides, these petitioners

did not ask for a separate submission. They ask that the article may be inserted in the constitution. His proposition would satisfy their prayer much more nearly in this respect than the article reported by the committee. It permitted the legislature by a constitutional provision to provide for a homestead exemption without limitation as to amount, only requiring that they should submit it to a vote of the people. Would the friends of exemption oppose this? If they did, they would oppose their own principles, which they had acted on but a few days ago, and oppose the prayer of all the petitions which had been sent in on the subject. Let them stand up to their principles then. Let them show, as on the bank question, that they are not afraid to trust the people. He expected to see them do so.

Mr. Vanderpoel offered the following amendment: "Strike out 'have power' and insert 'shall at its first session pass.' Strike out 'a majority of all the votes' and insert 'a majority of the votes cast on that subject.'"

Mr. Prentiss was opposed to both the proposed amendments. It would be seen that they were intended as restrictions upon the legislature. This was proper on such questions as banking and internal improvements, where danger was apprehended, but not on such a question as that of exemption, which was in its nature beneficent and merciful. We should not restrain mercy. That would be reversing the natural and customary order of things, and no one desired it. He was opposed to inserting any exemption law in the constitution, but would go for a separate submission of the question to the people. After all the excitements which had been raised upon it, that was the only way in which it could be effectually put at rest. He repeated—he would go for submitting the exemption question to the people, disconnected from anything else. Then he would go to the polls and vote against it, and so he believed would a large majority of the people.

Mr. Chase said he was sorry the gentleman from Jefferson (Mr. Vanderpoel) had offered an amendment with the intention of perfecting the article, when it was obvious that the friends of it were not to be allowed to perfect it in their own way. And he was surprised to see the gentleman from Milwaukee, after all the skill and tactics he had exhibited in endeavoring to prevent any effectual exemption, now pretend to be a friend of homestead exemption and offer an exemption article professedly with the desire of having it

incorporated into the constitution. Did he think the members of this convention were to be thus caught with chaff? He hoped the inconsistent, hypocritical substitute offered by him would not be entertained.

Mr. Vanderpoel withdrew his amendment.

Mr. Lakin said if he had had any doubts on this question, the able argument of the gentleman from Walworth (Mr. Estabrook) would have removed them all. Gentlemen must see that this exemption is not the poor man's law. It might more properly be termed the "vagrant act." It says to every vagabond that he may pick his neighbor's pocket and the law shall not reach him. He believed in no system of exemptions which did not operate equally; and it was not possible for us to frame one which would operate equally. The propositions submitted to us would operate to protect scoundrels from justice in ninety-nine cases out of one hundred. He believed in calling things by their right names. Call this, then, the "vagrant act," the "patent stealing act," the "scoundrel's protection act," or some such name, for such it was in effect and in intention. Gentlemen said that all great reforms were opposed at first, as this is. So have all great humbugs been opposed; and the history of the world is full of all such as this. Some have succeeded for a few years and made a great noise and then gone down to oblivion and been forgotten. Few have spread widely or been of long duration. How many are started up and exploded in every generation! Where are the humbugs of our fathers? They are not only dead, but forgotten; and when we read of them in history we can hardly imagine that any such ever existed. So will it be with our humbugs. They will seem monstrous and incredible one hundred years hence; and new ones equally absurd will then be in vogue. All these humbugs come up with the same cry as is now put forth by the advocates of homestead exemption. Their dupes say, "All great discoveries were opposed at first. The learned always discountenance everything which did not originate with them. The foolish have been chosen to confront the wise," etc. But if all great reforms have been opposed at first, it does not follow that all things which have been opposed were great reforms and bound to prevail. It was sheer sophistry.

Again, the advocates of exemption were clamorous for a separate submission at last. What argument could be used for a separate submission of this question which would not with equal pro-

priety be urged for the separate submission of every other article in which difference of opinion had prevailed in the convention? There was none. The gentlemen only wanted it as a hobby to ride on at the next election. Perhaps they were entitled to it. It might be one of the inalienable rights of politicians not to have their hobbies interfered with. He would be reluctant to interfere with it as far as they were concerned, but he thought this submission, after the overwhelming condemnation it had already received, would be an insult to the people. As for himself he was not opposed to an honorable exemption, but it was a matter wholly proper for statute regulation and should be left out of the constitution. Gentlemen had said that it was proper to go for a large homestead exemption and that those who opposed it would be politically killed. This argument had no weight with him. He would do what was right, to the best of his ability, without inquiring about consequences.

Mr. Fitzgerald said he was inclined to vote for the separate submission, but he would vote against the article at the polls. He had voted that the bank question should be submitted in a like manner to the people, and he saw no impropriety in doing the same with this.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 22, negative 41; for the vote see Appendix I, roll call 180].

Mr. Larkin moved that the convention adjourn, which was disagreed to.

Mr. Larkin moved to amend the article by substituting the following, viz.: "The legislature shall at its first session pass an act submitting to the qualified electors of this state, at the first general election, the question of homestead exemptions; and if a majority of the votes cast on that subject shall be in favor of such exemption, then the legislature at its next session thereafter shall pass the necessary law securing such exemption: *Provided*, That no such law shall take effect till it shall have been submitted to the people and have been approved by a majority of the votes cast on that subject."

Mr. Judd spoke.

Mr. Estabrook hoped the substitute would be adopted. It was common ground. It was almost exactly as the bank question was left. He was in favor of leaving the question to the people, but not along with the constitution. This amendment satisfied him very nearly.

Mr. Lovell said, as the proposition stood, he could not vote for it. He had given the subject of separate submission considerable thought, both here and heretofore, and he was opposed to it. The submission of any question separately was an implied admission that it would endanger the constitution if embodied in it. It was manifestly unjust to present to the people issues upon which they could not vote understandingly. Those who would vote against the constitution with it in could not know that it would not be placed in it, and so of those who wished it placed in that instrument. It would become the absorbing question, and the constitution itself would be lost sight of in the contest. There were great, and to his mind insurmountable, objections to the article itself as proposed to be submitted, which ought to defeat it here and before the people. It contained what the people had not asked for, and what they did not wish. They had called for a homestead exemption alone. The amendment of the gentleman from Milwaukee (Mr. Kilbourn) was very objectionable. It was rather a restriction—and an injudicious one—upon the legislature, than a grant of power. He was in favor of, and would give his vote for, a proposition making it compulsory upon the legislature to pass a law securing a homestead to families and for submitting such law to the people at the next election after for their approval, thus presenting the naked question of homestead exemption to the people, and not incumbering it with false issues. This was what the people wanted, and it avoided all the difficulties of making it a constitutional provision.

Mr. Castleman said he had not intended to say one word on this subject, but the remarks of the friends of the exemption article, charging that those opposed to it admitted it right in principle but were opposed to its admission into the constitution, had driven him to repudiate this assumption. As an abstract principle it was in his opinion wrong. Principle, as applied to this discussion, is the moral obligation of man to man. If one man agreed to pay another a sum of money he was morally bound to do so. But the exemption article, stepping between them, annulled the obligation and left him at liberty to fulfill the agreement or not, as he pleased. The principle was the same whether applied to the amount of ten cents or ten thousand dollars, and in the abstract it was wrong. He admitted that the necessity of the case often rendered it expedient to do what in the abstract was not right in principle. This was one of those cases. He recognized it as an act of expediency and not of

principle; and as the necessity which called for it was constantly changing in its urgency he preferred that it be left to the legislature and the people to change it as circumstances might require. He would therefore support the proposition of the gentleman from Milwaukee (Mr. Larkin) in preference to the article reported by the committee of the whole, because the article of the committee forced on the people the necessity of fighting the principle over again, after having once defeated it. And if gentlemen here would recall the scenes enacted during the canvass on the old constitution, if they would recollect the gatherings of hundreds and thousands who left their business and traveled five, ten, twenty miles to attend those gatherings, they would easily see that the time lost and expenses incurred had already cost the people five times as much as the whole expenses of this convention. They had whipped the article once. Should they now have the fight imposed on them again? He did not think it right. If submitted, they would be compelled to fight it again or let it go by default. The people might in this way be worried into its adoption. He had many other reasons for opposing the report of the committee, but the convention was impatient, and he would not impose on it. He would not have said even this much, but it had just been intimated to him that he stood alone of all the delegates from his county in opposition to the report and he deemed it his duty to define his position.

Mr. Gifford said it was extremely painful for him to differ with his colleague (Mr. Castleman) in regard to the opinions of the people of Waukesha upon this question. He had not taken a very active part in the canvass on the old constitution, but so far as he had mingled in it he did not remember ever to have heard any man say that he was opposed to it on account of the exemption article. He had heard, however, that there were some in the northern part of the county who took this ground. But he knew the people of that county as well as of others were divided on the subject, and he thought that was a sufficient reason for submitting it to them in their sovereign capacity. That and that alone would satisfy them.

Mr. Sanders moved that the convention adjourn. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 23, negative 39; for the vote see Appendix I, roll call 181].

Mr. Jackson moved to amend the substitute by striking out the proviso, which was agreed to.

The question was then put upon the adoption of the substitute as amended, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 26, negative 37; for the vote see Appendix I, roll call 182].

Mr. Beall moved that the convention adjourn. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 29, negative 33; for the vote see Appendix I, roll call 183].

The question then being upon ordering the article to be engrossed and read a third time, Mr. Beall moved a call of the convention, which was ordered, and Messrs. Biggs, A. G. Cole, Hollenbeck, and Reed reported as absent. On motion of Mr. Chase the convention adjourned.

WEDNESDAY, JANUARY 26, 1848

The reading of the journal of yesterday was dispensed with.

The President presented a communication from the superintendent of territorial property, which was read and on motion of Mr. Judd was referred to the committee on incidental expenses.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 19, article on incorporations, and No. 20, article on amendments.

Mr. Rountree introduced the following resolution, to wit: "*Resolved*, That $5.00 be paid to Frederick Hollman for two days' services as sergeant at arms pro tem of this convention." And the fifth rule having first been suspended for that purpose, said resolution was adopted.

Resolution No. 3, introduced by Mr. Biggs on the twenty-first, was taken up.

Mr. Chase expressed his hopes that the resolution would not pass. He could not see the object of the mover of the resolution. Its tendency could not be to gain friends or favor for the constitution in Congress.

The question being on the adoption of the resolution, Mr. Folts moved a call of the convention, which was ordered, and Messrs. Beall, Bishop, A. G. Cole, Colley, Davenport, Dunn, Estabrook, Featherstonhaugh, Fitzgerald, Fox, Gale, Harrington, Harvey, Jackson, Larkin, Lovell, McClellan, Mulford, Prentiss, Turner, and Ward reported as absent.

Mr. Foot moved that Mr. Colley be excused from his attendance, which was agreed to. Mr. Rountree moved that all further proceedings under the call be dispensed with, which was disagreed to. Mr. Richardson moved that the convention take a recess until half past two o'clock P.M., which was disagreed to. Mr. Richardson moved that all further proceedings under the call be dispensed with, which was agreed to.

Mr. Dunn said he would suggest a few reasons why the resolutions should not be adopted. He had not supposed at first that there was any serious intention of passing them and therefore had remained silent; but he perceived by the vote of yesterday that there was some reason to apprehend that they would prevail. The resolutions introduced by Mr. Biggs were grounded on the Ordinance of 1787, which provides that three or five states should be formed out of the Northwest Territory, and that the law providing for the admission of Wisconsin into the Union was unconstitutional in this: that the boundaries proposed for the state were at variance with the ordinance. If these resolutions were adopted, an absurdity would be created in the constitution. We have adopted an article on boundaries, agreeing to the boundary proposed by Congress, and

at the same time submitting another for which we express a preference. If the resolutions are adopted, the article must undergo a radical change or else we incorporate an absurdity. We adopt boundaries and then declare them to be unconstitutional. It will then become necessary to revise the article on boundaries and adapt it to the resolutions. Are we prepared to take that step? If so, it will be proper to adopt the resolutions.

If this matter came up now for the first time, Mr. Dunn said that he might be willing to vote for it; but when it was well known that Congress had had this subject before them time and again and had taken the opinions of the ablest jurists that they had the power of fixing the boundaries of the new states, it would be impolitic in the face of these facts, at this day, to present these resolutions. The only tendency would be to delay and impede our admission into the Union. He need only refer to the political complexion of the House of Representatives of the United States. That body would naturally not be particularly desirous of admitting Wisconsin at this time, but would prefer to delay the admission a year. They would avail themselves of every obstacle which the constitution might offer, and this would be an important one. They would insist that it was unwise and undignified for Congress to recede from the boundaries which they had proposed, and that the constitution should be referred back to the people of Wisconsin to be revised in conformity with the act of Congress.

It was desirable to adopt such a constitution as would be acceptable to the people and to Congress. He thought the article on boundaries, as adopted by the convention, was the very thing. It received the boundary proposed by Congress, but merely declared a preference for another one, leaving it to Congress to agree or disagree to this preference. There could be no embarrassment if it was left as it stood, while great embarrassment might ensue from the adoption of the resolutions. As a matter of history, he would revert to the fact that every state except Michigan has described in its constitution the boundaries given it by Congress. Michigan disagreed to the boundaries proposed and attempted to come into the Union leaving this an open question. The example of Michigan ought to be a warning to other states.

He would give an opinion in reference to this matter. It was objected by many members that they should not commit themselves by adopting the boundaries prescribed by the act of 1846, for by

so doing they would preclude themselves from obtaining other boundaries. Now he apprehended that if ever this question should be brought before the Supreme Court of the United States, and if the decision of the court should be in favor of the principles set forth in these resolutions, all the legislation of Congress on the subject would be annulled, and the principles of the Ordinance of 1787 would be the law of the land. If so, the act of 1846 would be annulled with the rest, and Wisconsin would be restored to the rights which they claimed for her. Thus acceptance of the boundaries prescribed by Congress would not restrict us in any manner when that question should be decided. Any proposition emanating from the convention, having for its object to submit a question as an agreed case to the Supreme Court of the United States, was useless; for it was asking Congress to reverse all its legislation on that subject for many years past. Why encumber the constitution with propositions asking Congress to be a party to an agreed case before the Supreme Court, when that body would never agree to it? The question might come up in some other form, and then if the Supreme Court should decide in our favor, we would be restored to the rights claimed for us. Viewing the matter in this light, we ought not at this late day to open the question. He repeated that as an original proposition—a proposition of first impression—he did not know that he would disagree with the mover of these resolutions. But it was now too late. There had been too much legislation of Congress on the subject.

Mr. Prentiss moved to amend the resolution by striking out all after the words "guarantee to her."

Mr. Prentiss said he was sorry that the resolutions had been offered, because he apprehended that they would embarrass the admission of the state into the Union. But having been offered, and believing that the people of Wisconsin possessed the rights claimed by them, he would be compelled to vote for them, though he thought it very impolitic and inexpedient to offer them at this time.

Mr. Rountree was opposed to the amendment. He desired that the question should be taken on the resolutions as they stood. He wished an expression of the convention to be had. Let it not be said that they wished to kill the resolutions with amendments. The argument that it was impolitic to pass the resolutions went for nothing. It was true that the article on boundaries had been agreed

to, but under what circumstances? There had been a fraud in the publication of the law of Congress, and the article, having been adopted under a misapprehension, should not be allowed to remain as the law of the land. He apprehended no difficulty in the matter of obtaining admission into the Union; but he esteemed it a duty which they owed to their country to assert their rights, whether they were admitted or refused. No one should be deterred by considerations of temporary advantage from claiming his rights.

These resolutions, if adopted, were a declaration of the opinion of the convention on the act of Congress of 1846. He was free to give his opinion that that act was null and void under the Ordinance of 1787. He held that if the act of 1846 conflicted with the Ordinance of 1787 it was null and void in itself. For one, he was willing to make that declaration. He held that we would not be excluded by the act of 1846 from coming into the Union, even if we disagreed to it. Our admission did not depend on the acceptance or rejection of the boundaries prescribed in that act. The act only declared that if we accepted those boundaries, we should have certain grants and privileges. He, for one, was not prepared to relinquish the rights of Wisconsin to the whole territory; and every gentleman must admit that if the Ordinance of 1787 was good for anything, they possessed such rights. He hoped that gentlemen would not allow their votes to be influenced by any suggestions of expediency. It was the duty of members of this convention to leave the question open, so that it could be decided in the Supreme Court of the United States, and not to jump at an erroneous conclusion, and through fear that the state might not be admitted in time to cast a vote at the next presidential election sacrifice its most important rights.

Mr. Dunn said he knew that the cry of fraud always excited indignation in every honest mind and weakened everything to which it was attached. The gentleman from Grant (Mr. Rountree) had said that a fraud had been perpetrated in the publication of the act of Congress—that is, the act as published by the territorial authorities. Now as a matter of history the original act as presented to Congress contained the language, "*Provided,* That the state of Wisconsin assent to or agree to" the proposed boundaries. So very sensitive were the members of Congress on this subject that the instant their eyes fell upon it they struck it out. The fact was

that the very fraud complained of was a fraud in favor of leaving this an open question.

Mr. Sanders said when the vote was taken on this question yesterday he could not vote for it because he regarded the act of Congress not as void but as voidable. The act might be confirmed by the consent of Virginia and Wisconsin. When the article on boundaries was before the convention it was said that it was a question with which we had nothing to do. We must be contented with the boundaries which Congress might please to prescribe. Now, sir (said Mr. Sanders), I beg leave to dissent from this position. It is well known that during the Michigan contest the opinion of Chief Justice Kent and D. B. Ogden was given on the subject of boundaries. They agreed in the opinion that whenever Congress should form more than three states in the Northwest Territory, then the northern boundary of the three first states should be "an east and west line down through the southerly bend or extreme of Lake Michigan." (Mr. Sanders here read the opinion of Judges Kent and Ogden.)

Mr. Kilbourn inquired whether this was the opinion of Mr. Kent as chief justice, or "lawyer" Kent.

Mr. Sanders replied that the opinion was given by Mr. Kent after he had retired from the bench. He did not conceive, however, that that fact detracted anything from the force of his opinion. Would it be contended that Congress would have the right to force the institution of slavery upon the Northwest Territory, in violation of the Ordinance of 1787? Could Congress suspend the writ of habeas corpus or prohibit "the free navigation of the waters leading into the Mississippi and Lake Michigan"? Should an act be passed altering or abridging any personal right which was secured to us by the ordinance, we would disregard and break through such a law as if it were a cobweb barrier. The ordinance was the Magna Charta of our rights. It was above the constitution and beyond the reach of Congress. Yet, if it could be violated in one respect, it could in another, therefore he contended that the act prescribing the boundaries of the fifth state was unconstitutional, because it did not follow the ordinance. When the Michigan case was in Congress, this whole matter was discussed. In the debate in the Senate, Mr. Buchanan in speaking of the boundaries of the fifth state said: "It is true that Congress have never yet determined the boundaries of the state of Michigan; but their omission to do so

could not affect in any degree the right of the free male inhabitants to vote for delegates to the convention which formed their constitution. As soon as Michigan shall be admitted into the Union the boundaries of Wisconsin will then be irrevocably determined. It will then be the last of the five states into which the Northwestern Territory can be divided under the terms of the ordinance. When that territory shall contain sixty thousand free inhabitants, they will have an absolute right to demand admission as a state into the Union, and we cannot refuse to admit them without violating the public faith."

Mr. Sanders said that he rose only for the purpose of reading to the convention the opinions which he had just read, which to his mind were a conclusive argument fully answering the position taken by the gentleman from Lafayette.

Mr. Richardson said that there appeared to be no difference of opinion in the convention as to the right of Wisconsin to the whole territory. The only question was, inasmuch as they had passed an article on boundaries, whether they should retrace their steps or decline doing so because they were so near the close of the session. He, for one, was willing to go back and undo what they had done wrong; and even if they were kept out of the Union by so doing for two or three years, not to give up the rights to which they were entitled.

Mr. Prentiss explained his proposed amendment. The part which he wished to strike out declared the law to be void and was unnecessarily severe and harsh.

Mr. Reed regarded the resolutions as involving a question of great importance. It seemed to him, however, that some of the gentlemen who had spoken mistook the proposition before the house. He did not understand the resolutions as being intended to form a part of the constitution, but merely an expression of opinion on the part of the convention as to the rights of the state. The article on boundaries had passed the convention under a misunderstanding. The whole argument in favor of accepting the boundaries proposed by Congress had been based on that one clause which had been supposed to be in the law, but which really was not in it. The resolutions simply stated what were supposed to be the rights of the state. He thought they ought to go back and undo what they had done under a misconception. If they accepted the boundaries prescribed by Congress, they surrendered a very large portion of the

original territory without any hope of reparation. Michigan asserted her right to the territory claimed and occupied by Ohio. It was true she did not get it, but she received in lieu of it twenty thousand square miles of territory properly belonging to Wisconsin. It was eminently proper for the convention to claim the territory in question, and he would not only go for the proposition of the gentleman from Green (Mr. Biggs) but would also be in favor of striking out the entire article on boundaries and leaving the question open. He did not believe this course would prejudice the admission of Wisconsin into the Union; but if it should, they were bound to assert the rights of the people and not to sign them away without any equivalent or the hope of one. He would vote for the resolutions, and hoped that if they were adopted the vote by which the article on boundaries was adopted would be reconsidered.

Mr. Chase had not supposed that this subject was going to take so wide a range after it had already been disposed of. Like the ghost of Banquo, it was continually coming up and pushing members from their stools and would continue to do so until it was finally laid. Every man of sense could read the Ordinance of 1787 for himself, and his opinion was just as good as Chief Justice Kent's. Gentlemen must appeal to experience in this matter. Had any state gone into the Union without boundaries? No, nor ever would. The only argument that had been advanced in favor of the passage of the resolutions was that it might be policy for us to remain out of the Union until after the next presidential election. He resided in Michigan at the time of the admission of that state into the Union and well remembered the difficulties in which she involved herself by the course she adopted. She did not obtain her admission until her boundaries were settled. The question, after all, resolved itself into this: "Is it best to remain out of the Union until after the presidential election of 1848?"

Mr. Estabrook would be sorry to be made to believe that the subject was narrowed down to a mere question of expediency. He considered it one of right. He had heard no argument here conflicting with the right of the territory under the Ordinance of 1787. He could well understand what reasons actuated gentlemen occupying a central position in the state, like the member from Fond du Lac, in opposing these resolutions. With them it was a mere question of policy. Michigan took ground for the territory she was entitled to on the south. Did she get it? No. But the re-

sult was a compromise by which she yielded her rights and took territory in Wisconsin in lieu of them. By that act Congress infringed on the rights of Wisconsin. Now were we, like whipped spaniels, to crouch and yield to these encroachments? Let us assert our rights, and by doing so we shall win the respect of Congress.

The question was here taken on Mr. Prentiss, amendment and it was adopted.

Mr. Kilbourn wished to make a few remarks. Inasmuch as gentlemen seemed to think that Wisconsin had some rights of which she was in danger of being deprived, his own opinion was that under the Ordinance of 1787 they possessed very slender grounds. This ordinance gave a discretionary power to Congress to make one or two states north of an east and west line running through the most southerly bend of Lake Michigan. It left a discretionary power to Congress which it has seen fit to exercise in a certain way. If the boundaries established by Congress are to be regarded as unconstitutional, and the state of Illinois extends north to the British line, and this territory is to be regarded as a part of Illinois, all the rights we possess are by virtue of the distinct action of Congress. Gentlemen beg the question at first and assert that Wisconsin has certain rights and then argue upon the propriety of maintaining them. But let us admit these rights to exist. If the territory to the north is all we are striving for, what is it worth? Is it worth taking as a gift, with the expense of maintaining a government over it? As a citizen of Wisconsin, I would reject it if the fee simple of it were offered me.

Mr. Sanders said the gentleman from Milwaukee (Mr. Kilbourn) had stated it was left optional with Congress to make one or two states north of the southern boundary of Illinois. Whether this were so or not, Congress could not make Wisconsin a part of Illinois, for the country lying north of the line running through the most southerly bend of Lake Michigan had a right to demand admission into the Union when it should have a population of 60,000 free white inhabitants. It had been argued, when the subject of boundaries was under discussion before, that with the consent of Michigan Congress would annex Wisconsin to that state. This he denied, because as soon as four states were erected out of the Northwest Territory the Ordinance of 1787 defined the boundaries of the fifth, and Congress could not alter or abridge the right.

Mr. Lovell said that no one on this floor except the gentleman from Milwaukee (Mr. Kilbourn) had taken the true ground on the question of the right of Wisconsin to the boundaries here claimed. He (Mr. Lovell) was one of those who believed that no right existed, save what Congress gave us. Great names had been cited as authority for our right to a line drawn east and west through the southern bend of Lake Michigan, and they deserve great consideration; but names equally distinguished might be cited on the other side of the question. This subject had been frequently examined, and after long and careful investigation many of the ablest jurists in the United States had arrived at the conclusion that there were no rights in the matter other than as Congress should establish them.

It had been said that if the boundaries prescribed in the Ordinance of 1787 were set aside, all the other provisions under that ordinance would be liable to be disregarded. This was not so. The matter of boundaries alone was left open in the ordinance. The provision of the fifth section declares, "The boundaries of these three states shall be subject so far to be altered that if Congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of said territory which lies north of an east and west line drawn through the southerly bend of Lake Michigan." The words "in that part" seemed to be the key words, and if there was any ambiguity it would be proper to refer to the action of Congress and the cotemporary history of the passage of the ordinance for an explanation of it. What cotemporary history was this? On the seventh of July, 1786, Mr. Grayson of Virginia moved a resolution in Congress requesting Virginia "so to alter its acts of cession as that the states in the Western Territory may be bounded as follows: There shall be three states between the Ohio and a line running due east from the Mississippi to the eastern boundary of the United States, so as to touch the most southern part of Lake Michigan." The resolution then proceeds to fix the boundaries of the three south states and two north states, dividing them by this fixed due east line. Congress refused to pass the resolution and on the same day did pass another resolution in these words: "That it be and it hereby is recommended to the legislature of Virginia to take into consideration their acts of cession and revise the same so as to empower the United States, in Congress assembled, to make such a division of the territory of the United

States lying northerly and westerly of the river Ohio into distinct republican states, not more than five nor less than three, as the situation of that country and future circumstances may require." And in the preamble preceding the resolution it was among other things recited that without such change in the act of cession "some of the new states will be deprived of the advantages of navigation." Before Virginia acted upon this recommendation Congress passed the Ordinance of 1787 as it now stands, and in it in part adopted the line proposed in Mr. Grayson's resolution, and in part rejected the line. And it is believed that it was intended so far to fix the dividing line between the two north and three south states that the south states should not be deprived of the advantage of navigation, and so far to leave it in the discretion of Congress to fix the boundary north of the east and west line in such manner that the states of Indiana and Illinois should have access to Lake Michigan. Congress had acted upon this interpretation of that part of the ordinance. Virginia had acquiesced, and this was "common consent."

As to the northern boundary, he doubted whether the claim of Wisconsin to that was any better founded. He doubted whether any portion of the territory north which had been acquired since 1787 by treaty with Great Britain belonged to Wisconsin. By the treaty of peace in 1783 the boundary between the United States and Great Britain was to run through Lake Superior, thence to the Lake of the Woods; thence due west to the Mississippi; thence down the Mississippi to 31° north latitude. It was obvious by the terms of that treaty very little was known of the country at that time. The maps of that period made the shores of Lake Superior run in a more northerly direction than accurate surveys had since settled them to be. When in 1794 this boundary was found to be impossible, another treaty was entered into by which the boundary was left unsettled as far south as one degree south of the Falls of St. Anthony, considerably south of the line fixed in the act of Congress of 1846. The treaty of 1818 again attempted to settle the boundary, but it was never finally agreed upon and fixed until the treaty of Washington in 1842. All the treaties, however, showed most conclusively that the territory ceded by Virginia could not have extended north of the St. Louis River.

It was not true that Michigan was admitted into the Union with open boundaries. Her Senators were sent to Washington and were kept in the lobby waiting until the boundary question was settled.

What was the fact with respect to Missouri and Iowa? While Iowa was yet a territory the question of her boundaries was indeed submitted to the Supreme Court of the United States. But when she was admitted into the Union Congress passed an act determining her boundaries and declaring that she should not be admitted until she accepted of the boundaries prescribed.

With all these facts before us, ought we not to dismiss this question? Having our boundaries so accurately, so carefully defined by the chairman of the committee on territories, now a member of the United States Senate (Hon. Stephen A. Douglas of Illinois) it would be the height of folly to set up pretended claims to extort something more from Congress. The only effect of it would be to keep us out of the Union. Gentlemen have talked of our submitting like whipped spaniels. We have no right to the boundary claimed; and the epithet might more appropriately be applied to those who by passing these resolutions whine for what they could not reasonably expect. As a queston of policy, even if there existed a right, it would be better to yield it. By asserting it, if successful, we should only obtain a portion of country which would be useless to us. Let us look at the small states of New England. How much better governed are they than those with a large and sparsely settled territory! Their laws are more stable and better executed; and the reason is that they are more compact, and more united, and more assimilated. This would of itself be a strong argument against annexing the extensive waste territory to our north.

Mr. Lovell said he should have let this matter pass, if he had not thought the effect of passing the resolutions would be injurious. If it was merely left as a resolution, it was useless; if to form a part of the constitution, most injudicious. Rather take up the matter openly and reconsider the vote by which the article on boundaries was passed, than make a windy declaration which amounted to nothing.

Mr. Estabrook said that evidence enough could be shown to convince any jury so that they would render a verdict in favor of those who claimed the whole territory. He cited the authority of Kent, Ogden, J. Q. Adams, and others, in favor of the right of Wisconsin to the entire territory up to the British line.

The morning hour having expired, Mr. Rountree moved that the rule be suspended for the further consideration of said resolution, [which was agreed to].

The question was then put upon the amendment, and was decided in the affirmative.

Mr. Larrabee moved to amend the resolution by striking out in the first line the words "territory of Wisconsin being" and inserting the words "people of"; also, in the last line by striking out "them" and inserting "her," which was disagreed to. And a division having been called for, there were 21 in the affirmative and 27 in the negative. The question was then put upon the adoption of the resolution, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 38, negative 26; for the vote see Appendix I, roll call 184].

The question was then put upon the adoption of the preamble, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 37, negative 27; for the vote see Appendix I, roll call 185].

Mr. Lovell inquired, "Are these resolutions to be appended to the constitution and submitted to the people?"

The President: The chair has no information on the subject.

No. 20, article on amendments, was then taken up and read the third time, when Mr. Wheeler moved to recommit the article to the committee with instructions to substitute the following for the article, to wit: "Every tenth year after the adoption of this constitution it shall be the duty of the legislature to submit to the people at the next annual election the question whether they are in favor of calling a convention to revise the constitution or not; and if a majority of the qualified electors voting thereon shall have been in favor of a constitution, the legislature shall at its next session provide by law for holding a convention, to be holden within six months thereafter." And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 22, negative 44; for the vote see Appendix I, roll call 186].

The question was then put upon the passage of the article, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 52, negative 11; for the vote see Appendix I, roll call 187].

No. 19, article on incorporations, was then taken up and read the third time. And the question having been put upon the passage of the article, it was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 65, negative 1; for the vote see Appendix I, roll call 188].

Articles No. 19 and 20 were then referred to the committee on revision and arrangement.

Mr. Dunn, from the committee on revision and arrangement, made the following report with amendments, to wit:

"The committee on revision and arrangement respectfully report the articles on the judiciary, boundary, suffrage, and the amendment to the legislative article with corrections and suggestions, in which they ask the concurrence of the convention.

JUDICIARY

"Title—Alter so as to read: 'Judiciary.'

"Section 2. Last line, substitute 'judges of the circuit courts' for 'circuit judges' and substitute 'and' for 'or' in preceding line.

"Section 3. In third line strike out 'in said court.' Insert instead of the ninth, tenth, eleventh, and twelfth line to 'time,' as follows: 'Section 4. The separate supreme court when so organized shall not be changed or discontinued by the legislature; the judges thereof shall be so classified that but one of them shall go out of office at the same time, and their term of office shall be the same as [is provided for] the judges of the circuit court.'

"Section 6. Insert 'practicable' for 'may be' and in last line substitute 'judges of the circuit court' for 'circuit judges.'

"Section 7. Strike out in eighth line 'to be ascertained as the legislature may direct.'

"Section 8. Strike out in second line 'otherwise.'

"Section 10. Strike out in first line of third page 'that of' and alter last paragraph so as to read: 'No person shall be eligible to the office of judge who shall not at the time of his election be a citizen of the United States and have attained the age of twenty-five years and be a qualified elector within the jurisdiction for which he may be chosen.'

"Section 11. Transpose 'at least twice in each year' in the fifth line so as to follow 'held' in the fourth line.

"Section 23. Strike out in the fourth line 'suitable to be'; strike out in sixth line 'at such time as may be prescribed' and alter last line so as to read 'and such commission shall terminate upon the rendering of the report, unless otherwise provided by law.'"

SUFFRAGE

"Section 1. In second class substitute 'conformably to' for 'in compliance with.' In the third class insert 'to the contrary' before 'notwithstanding.' In proviso strike out 'to be held subsequent to the passage thereof.'

"Section 2. Alter to read: 'No person under guardianship, non compos mentis, or insane shall be qualified to vote at any election; nor shall any person convicted of treason or felony be qualified to vote at any election unless restored to civil rights.'

"Section 3. Put a period after the word 'chosen' and recommend that the remaining portion of the section be added as a separate section to the legislative article.

"Section 6. In the third line strike out 'for.'"

BOUNDARIES

"Suggest an insertion in section 1 of the boundaries described by the act of Congress, after 'six' in sixth line.

"Section 2. Insert after 'confirmed' in second line 'and shall remain irrevocable without the consent of the United States, to wit: Beginning at the northeast corner of the state of Illinois, that is to say at a point in the center

of Lake Michigan where the line of forty-two degrees and thirty minutes of north latitude crosses the same; thence running with the boundary line of the state of Michigan through Lake Michigan, Green Bay, to the mouth of the Menominee River; thence up the channel of said river to the Brule River; thence up the said last mentioned river to Lake Brule; thence along the southern shore of Lake Brule in a direct line to the center of the channel, between Middle and South Islands in the Lake of the Desert; thence in a direct line to the headwaters of the Montreal River, as marked upon the survey made by Captain Cram; thence down the main channel of the Montreal River to the middle of Lake Superior; thence through the center of Lake Superior to the mouth of the St. Louis River; thence up the main channel of said river to the first rapids in the same above the Indian village, according to Nicolet's map; thence due south to the main branch of the river St. Croix; thence down the main channel of said river to the Mississippi; thence down the center of the main channel of that river to the northwest corner of the state of Illinois; thence due east with the northern boundary of the state of Illinois to the place of beginning, as established by "An Act to enable the people of the Illinois Territory to form a constitution and state government and for the admission of such state into the Union on an equal footing with the original states. Approved, April 18, 1818." ' "

Mr. Sanders moved that the consideration of the report of the committee on the article boundaries be postponed until tomorrow morning, which was agreed to. And a division having been called for, there were 31 in the affirmative and 16 in the negative.

The amendments reported by the committee on the article suffrage were then severally concurred in. The first, second, and third amendments reported by the committee on the article judiciary were then concurred in.

The question then being upon concurring in the fourth amendment of the committee, Mr. Chase moved to amend the same by striking out the words "is provided for," which was disagreed to. The fourth, fifth, sixth, seventh, eighth, ninth, and tenth amendments of the committee were then severally concurred in.

Mr. Chase moved to amend section 22 of the article by striking out the words "adapted to" and inserting the word "for," which was disagreed to.

The report of the committee on the article legislative was then taken up, and the amendments reported by the committee were severally concurred in.

The articles suffrage, judiciary, and legislative were referred to the committee on revision and arrangement.

On motion of Mr. Reymert the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

Messrs. Sanders, Reymert, and Davenport by leave presented petitions from inhabitants of Racine County on the subject of homestead exemption.

Mr. Doran asked to be excused from the committee appointed to prepare an address to be submitted with the constitution, which was granted. The President appointed Mr. Prentiss as a member of said committee.

No. 16, article on exemption, was then taken up, when Mr. Lakin moved to amend the article by adding to the resolution as follows: "*Provided,* That every member of this convention who shall vote for a submission of this article as aforesaid shall in his proper person or by his agent subscribe the same before it shall be presented to the electors aforesaid for their adoption."

Mr. Lakin said that on almost every disputable question that had been before the convention gentlemen had called upon their opponents to come up to the mark and "show their hands," etc., and had frequently called for the ayes and noes for that purpose. The object of this amendment was to make gentlemen show their hands upon the exemption question. He wanted gentlemen who were willing to vote for this article to father it and sign their names to it and so send it before the people.

Mr. Rountree: I feel it my duty to express my views upon the necessity and propriety of engrafting this article into the constitution which this convention is about to submit to the people of this territory for their approval; and I will here state that the principle of exemption from forced sale of a limited amount of property I am decidedly in favor of and have ever been. While a member of the legislative council of this territory some eight or nine years ago I supported a bill which afterwards became a law, exempting a limited amount of property from forced sale; and should I be a member of the legislature of the future state of Wisconsin I should favor the passage of a law making liberal, equitable, and proper exemptions. But, sir, while I feel and express these sentiments in favor of suitable laws upon the subject, I do most earnestly oppose this article becoming a part of the constitution of our state. It is true that the proposition is to make a separate submission of this article, to be voted on at the same time that the constitution is submitted to the people to be voted for; to this I am equally opposed, for the reason that it is a proper subject for legislation. The wants, circumstances, and conditions of the people are continually changing. An exemption law that would be esteemed liberal, and answering all the wants of the people at this time, might be insufficient for their protection against want one or two years hence.

This is called by the peculiar friends of the measure the great principle of human rights; and they urge that it should be recognized in the fundamental law of the land—that the people demand it, and that nothing short of it will be satisfactory. To this argu-

ment I will say that so far as I know the wishes of the people upon the subject, they are adverse to the making of the article a part of the constitution or of submitting it as a separate article. From the eloquence and tenacity with which the friends of the measure urge its adoption upon the convention, we are led to conclude that the representatives of the people that are soon to occupy these halls as the immediate representatives of the people, elected by them and commissioned to do their will, will not feel as great a regard for the well-being of community as the peculiar friends of the people in this convention feel, and that the friends of the poor man will cease with the close of this convention. Sir, I maintain these are not fair and legitimate conclusions; that the members composing the legislature will come from the body of the people and will entertain views and feelings in common with them and will be safe persons to entrust with the enacting of such laws as the wants of the people demand; and that they will not disregard the will and wishes of the people, but will be quite as anxious to protect in safety the poor man with his family, as we are. And, sir, in the legislature it can be done and I hazard nothing in saying it will be done, sufficiently and properly.

This convention has recognized the principle of exemption by inserting a clause in the article called the bill of rights, which will be sufficient warrant for the passing of suitable laws upon the subject. It has not escaped the recollection of gentlemen that within less than one short year a constitution formed by the delegates of the people assembled as we are was rejected by a large vote, and that, too, after having been advocated by eloquent and learned gentlemen, publicly and privately, in every portion of the territory. The great and uncompromising objection to that instrument was such an article as this (but exempting a greater amount of property) in conjunction with the article known as the married woman's article. It is also true that there were contained in that instrument some other less objectionable articles, but I do believe the article here proposed contains as objectionable a feature as was contained in the old constitution, and my conclusion is that the people have by that vote repudiated this article as a constitutional provision.

Gentlemen say that this convention must either engraft this article into the constitution or make a separate submission of it; that unless we do, the people will be disappointed. I can say that

in the portion of the territory from which I came the people will be much disappointed if this convention does either engraft it into the constitution or submit the question separately. It is true, Mr. President, that, should the convention determine to force this article upon us, I would prefer that it should stand outside of rather than inside the constitution, believing as I do that it would be voted down by a large majority of the votes of this territory.

There is, sir, another and with me a very strong reason why this article should be rejected by this convention; and that is, I think we have now formed a good constitution, one that I can support and one that I can recommend to others; indeed, sir, but for two or three provisions (which I could wish were different) I should say that it is the very best constitution that I have ever seen, and it will, in my opinion, be adopted by the people almost by acclamation. And I now ask the friends of the exemption article, if it would be prudent to throw into this fair instrument a firebrand—an article that all must admit there is great dissension of opinion upon. Does even the progression that Democracy is making, as claimed by the friends of this measure, warrant so hazardous an enterprise? I think not, sir; and I think prudence dictates that we should not. It seems to me that gentlemen who advocate the submission of this article cannot vote against its adoption at the polls, notwithstanding the declaration made here, that they will oppose its adoption when they shall be called upon to vote for or against the article at the same time the constitution shall be voted upon. I do not understand how gentlemen can reconcile such a course with the rules of consistency which they say govern them. We are told by gentlemen that this is one of the measures peculiarly dear to the progressive Democrats of the age, and that we may as well oppose or try to arrest the mighty cataract of the great Niagara as to oppose this great principle of the Democratic party. I say to all such as wish to build their fame upon such foundations, that they are welcome to enjoy the glory derived from the measure. As for myself, I shall rest contented by voting against the article here, and shall do so hoping and believing that it may be defeated.

The amendment was disagreed to.

Mr. Castleman moved a reconsideration of the vote just taken.

He said he wished gentlemen to bear the responsibility of their acts on this subject—not to be enabled to cover up their tracks. He called for the ayes and noes.

Mr. Beall spoke.

The question was then put and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 38, negative 26; for the vote see Appendix I, roll call 189].

Mr. Sanders said the amendment was intended as a ridiculous rider, and he too was glad that the ayes and noes would show who were in favor of it. Mr. King said he had voted for the reconsideration out of courtesy to those who desired to put the ayes and noes on record. But he would vote against the amendment, because he intended to vote against the whole article at any rate, and there was no use, therefore, in helping to change it.

The question was then put upon the adoption of the proviso, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 27, negative 38; for the vote see Appendix I, roll call 190].

Mr. Rountree moved a call of the convention, which was ordered, and Messrs. Fowler, Harvey, and Hollenbeck reported as absent.

Mr. Reymert moved that all further proceedings under the call be dispensed with, which was disagreed to.

The sergeant at arms was sent for the absent members.

The absentees having been reported in attendance, the question then recurred upon ordering the article to a third reading.

Mr. Fitzgerald said he was opposed to the exemption principle, and would therefore vote against inserting the article in the constitution or submitting it separately to the people. He had intended at first to vote for leaving it to the people, but on further reflection he had concluded that, as the measure was wrong and would be injurious to the people, there was no use in opening a door for its adoption. It would operate against the poor, who might wish to borrow or get credit, and he was satisfied the country did not need it, nor ask it. He was a poor man himself, but he was willing to pay his debts and wanted no laws by which he could evade it. Mr. Vanderpoel said he was sorry that the gentleman thought it his duty to pursue such a course, and especially he was sorry to see an Irishman oppose such a humane provision as the homestead exemption, when his own country exhibited so bitter a spectacle of the

miseries which this was designed to prevent. Mr. Fitzgerald said, in reply, that his countrymen never had asked for any law which would enable them to evade the payment of their just debts. They wanted no such assistance; they were willing to pay.

Mr. Estabrook said he would recapitulate the argument and show the present state of the question. Thus far nothing had been put in the constitution which would excite any opposition to it; and if we put nothing in it which was more improper, it would not probably be opposed by a single press or person. But we were now getting on dangerous ground. This was the first time the adoption of the constitution had been seriously endangered. There were indications now that a false step might be made which would render all our labors vain. He knew there were two sides to the exemption question and he respected the advocates of it. He knew they were very anxious to be gratified in the establishment of their favorite measure. But still there was a larger—tenfold larger—party who desired that we should let it alone, that we should not dirty our hands with it in any shape. Now he would ask, in all candor, which of these two parties should be gratified. If the wishes of the mass of the people were to prevail, the advocates of exemption would stand on the same ground as before. It would not injure their course or delay it at all. As soon as they could get a majority of the people in favor of it, they could establish it. But it would not be so on the other hand if the wishes of the smaller party were to prevail at this time. If their wishes were gratified, it was evident that the exemption article would be made the great question at the polls, and the adoption of the constitution might be endangered, or the attached article adopted on the popularity of the constitution. If the wishes of the smaller party prevailed, the larger was sure to lose; but if the wishes of the body of the people prevailed, the smaller party could lose nothing. How, then, could it be asked that the larger party should yield?

Mr. Estabrook said he was aware that much feeling had been aroused on this question and it was wonderful to see what exertions had been made by the advocates of exemption. It was a sight calculated to excite alarm and disgust. But a few days ago many gentlemen who were now in favor of the measure declared freely in private conversation that they were opposed to it. How was this to be accounted for? He had heard it whispered that there had been bargains and sales on foot. Was there not enough in these

maneuvers to excite alarm and disgust? If they were to prevail, the result could not be otherwise than disastrous. (Mr. Estabrook here read several letters from his constituents and others in regard to the petitions which had been presented for a homestead exemption.)

Now (said Mr. Estabrook) in view of the late overwhelming vote of the people against this measure and of the expressions which thus come up to us, shall we, to gratify the phantasies of diseased brains, degrade ourselves in the eyes of the world and insult our constituents by thrusting this measure upon them again? Shall we, from our lofty station of constitution-makers, come down and dabble in matters which would be disgraceful even for members of the legislature? He hoped not. He hoped gentlemen would consult their dignity better, not forgetting the wishes of their constituents, the fitness of things, and the mischiefs which a false step might engender.

Mr. McClellan said that so far as the town in which he lived was concerned, he would assure the gentleman from Walworth that he was very confident his correspondent from Wheatland was mistaken. If he knew anything of public sentiment among his constituents, there was a decided majority in favor of an exemption of some kind. His sentiments were well known before the late election. He had frequently been questioned on the subject. He had uniformly told them he did not believe it proper to incorporate the article in the constitution, as he believed it entirely legislative in its character; but he had pledged himself to his constituents that if the question of a separate submission came up before the convention he would vote for it, and he now felt that he would misrepresent their wishes if he did not perform his promise.

Mr. Gifford did not rise for the purpose of discussing the question at any length, but he wished to notice some remarks of the gentleman from Walworth (Mr. Estabrook). The gentleman had assured the convention that a very large majority of his constituents and, as he believed, of the people of the territory were opposed to the homestead exemption and yet he was unwilling to submit the question to them. If the gentleman was opposed to it himself and believed the people were so generally opposed to it, he did not see why he should be so much opposed to submitting the question to them. He (Mr. Gifford) did not wish to see it placed in the constitution without a special vote of the people; but he did wish to see

this question submitted to the people for their decision. If they did not want it, there was no danger of its adoption, and if they did want it, all efforts to prevent their having it would be unavailing.

Mr. Judd spoke. Mr. Beall made some remarks.

Mr. Larrabee regretted that the subject had elicited so much debate. He had hoped that both friends and opponents of the measure would have been content with simply voting upon it. He was himself conscientiously in favor of the principle and wished to see it adopted by the people as a part of the constitution and was therefore in favor of the proposition to submit the question. He believed the laws had generally been made for the benefit of the few to the disadvantage or neglect of the many, and he wished to give to the majority the advantages of such a law as a sort of offset for the many wrongs which had been committed upon them by unjust legislation. He was in favor of the measure upon principle and not because it was the particular thunder of this man or that. He regarded it as a great and important principle and would exhort its friends to cheer up and be assured that it would be recognized sooner or later; and if it failed then, they should not be discouraged but try it again.

Mr. Sanders said he had prepared a proposition of his own upon this subject with a view of offering it as a substitute; but at the request of friends he had concluded to withhold it until the proposition then before the convention was disposed of, and if that should be rejected he would then submit his. He was opposed to placing any exemption article in the constitution and would vote against it at the polls if the question were submitted to a popular vote. But at the same time he would yield to no man as an advocate of liberal exemptions. The exemption of the homestead was a measure demanded by the spirit of the age—it was demanded by the masses—it was a measure for the benefit of the million, and it must prevail ultimately—it could not long be smothered—they might as well attempt to smother a volcano. It was a measure in favor of the poor against the rich; and its progress could not be arrested. He had almost said that the Almighty himself could not arrest it and he did not know but he might say so with propriety, for it was impossible for God to do wrong. Still he was not in favor of placing the exemption in the constitution, but he would insist upon a separate submission of the question; it was demanded by the people.

Mr. Estabrook called for the proof that any such measure was demanded by the people. Mr. Sanders said he had letters from his constituents upon the subject, but unfortunately they were not within his reach at that moment—they were at his room and he could not exhibit them at that time. The writer of one of those letters, a very respectable man, stated that he did not believe there were three men in the whole town who were opposed to the separate submission of an exemption article, and he had many other letters urging him to sustain this measure and he was ready to do it, and would always insist upon the principle that the food and clothing of a family should not be taken to satisfy the creditor.

Mr. Chase said he had not studied law, like the man alluded to by the gentleman from Walworth, and was not, therefore, very smart; he did not make any pretensions to smartness at all, but he must repel, so far as he was concerned, the imputations of that gentleman that there had been bargains and sales and logrolling in regard to the measure before the convention. He could assure that gentleman, and every other, that there had been no bargaining, or buying, or selling, or logrolling with him. He detested such things as he did a pestilence or a war, and he would as soon be found promoting one as another of these plagues. As he had remarked on former occasions, he paddled his own canoe. He did not follow in the wake of any man or set of men; he entertained his own opinions and acted according to them, and left others to do the same. He did not, like the gentleman from Dodge (Mr. Judd) sustain this measure because he believed it to be popular, but because he believed it was right; nor should he, as that gentleman had avowed his intention to do, abandon it as soon as he found it was unpopular. If the question should be submitted to the people and they should reject it, he would be just as much in favor of it as he was at that moment, and would advocate it still. He had often labored with minorities for measures which he believed to be right, but which were, notwithstanding, decidedly unpopular. He was one of a very few who, several years ago, petitioned the legislature for the repeal of the collection laws, but he had no idea that it was popular, but he believed it was right, and believed so still; and had the proposition been brought up in the convention he would have voted for it. He was ready to vote for it there or anywhere else, at that time or any other time. So in regard to every other proposition: he was for or against it as he believed it to be right or wrong, and

not because he believed it was popular or unpopular.

Mr. Estabrook said he must ask pardon of the gentleman from Fond du Lac (Mr. Chase) if he supposed he had alluded to him in the remarks he had made about logrolling; he did not intend to implicate him in any such transaction. He believed him to be a very honest man. He listened to him on all occasions with great satisfaction, and was oftentimes delighted with his remarks, as with an orator, a poem, or a romance. The gentleman was a Fourierite, and he almost envied him the frame of mind in which he seemed to exist. He entertained lofty conceptions of the perfectibility of human society and human affairs generally, and seemed to luxuriate in bright visions of the future felicity which was to be secured to the human race by progress and reform. That was all very well. He believed that the gentleman was perfectly honest in his opinions, and he respected him for the frankness and independence with which he avowed and maintained them, and it was far from his intentions to impute to him the use of any dishonorable means to carry a point.

Mr. Estabrook wished gentlemen would not dodge the question. They professed to be opposed to placing it in the constitution—oh, no, they would not do that at all; they would vote against it there and at the polls, but they must submit it to the people! Oh, the dear people! Will you not let the sweet, dear people vote upon this question? Well, suppose the people should vote upon the question, and suppose the article be adopted by a small minority of the voters of the territory; where would it be then? Would it not be in the constitution, where gentlemen say they don't want to have it? If they do not want it in the constitution, why will they vote to place it there at all? He was prepared to vote against placing it in the constitution either directly or contingently, and to run the risk of the annihilation predicted by the gentleman from Dodge (Mr. Judd), and if he should happen to be annihilated as a Democrat he could follow the example of that gentleman and come out a Whig, for he believed his history was sufficient to establish the fact that renegades from the Democratic party were the first to receive fat offices from the Whigs.

The friends of this measure had endeavored to excite the sympathies of members by declaiming upon the cruelty and hardship of taking away the poor man's home—the poor man's farm; but he had never known an instance in the territory of a man's farm being

taken from him on execution, and he challenged every lawyer in the convention to cite a single instance of the kind from any part of the territory. All the declamation they had heard about the poor man's home was merely for effect; there was no real foundation for it, and the measure under consideration was not demanded either by the necessities of the poor or by the voice of the people; and no end could be accomplished by it but the gratification of a few men who stood committed to this particular kind of exemption and who seemed to imagine that their fate was coupled with it.

Mr. Doran said that as some sarcastic allusions had been made to him and his constituents, he would take occasion to say that had other gentlemen taken as much pains to ascertain the will of their constituents as he had done, there would have been no need of spending two or three days in the discussion of this question. As he had declared on a former occasion, when a candidate for the convention, expecting that this question would be brought up, he had taken special pains to ascertain the sentiments of the people of Milwaukee County upon it, and not one-fourth of the Democratic party were in favor of such an exemption, and the Whig party were almost to a man opposed to it. The people of Milwaukee County called for no such measure; they desired no such measure either in the constitution or submitted separately. Their minds were made up in regard to it. He was surprised to hear gentlemen call this a great principle, while they declared themselves opposed to placing it in the constitution—determined to vote for it as a separate article and to vote against it at the polls. The gentleman from Racine (Mr. Sanders) called it a great and even a Godlike principle, but he would vote against placing it in the constitution, and then he would vote for it as a separate article, and finally he would vote against it at the polls! He knew not what to think of such inconsistent and contradictory avowals upon the same question, as he had heard upon the one under consideration. As to his constituents, they were honest men and wished to stand before God and the world as such, and they would regard this provision as an attempt to brand them as knaves. They did not demand this measure, nor did they desire it, and they would regard it as an insult if such a proposition should be thrust before them. They did not wish to be compelled to go to the polls and vote themselves honest men or stand branded as knaves by a constitutional enactment.

Mr. Cole, of Grant, remarked that the subject had been discussed at great length, while, as appeared to him, but little had been said upon the real question at issue. The real question as he viewed it was whether they should place an exemption law in the constitution or leave it for the future action of the legislature. In the whole course of the discussion he had not heard anyone deny that the matter was a proper subject of legislation. As this had not been denied and could not be successfully, it was to him a matter of surprise and regret that it should not have been left, by general consent, to legislative action. For himself, all that he wished to know in regard to any proposition which might there be presented was whether it was constitutional or legislative in its character. If it was properly a subject of constitutional law, he was ready to bestow upon it a careful and, if necessary, a laborious consideration. On the other hand, if it was merely legislative in its character, he was ready to dismiss it at once without regard to its merits in other respects. As none pretended to deny that the proposition before them was a proper subject of legislation, he could not but hope it would be left where it belonged and not be suffered to encumber the constitution and distract the public mind in pondering its merits with a subject not connected by any sort of affinity with it.

Mr. Jackson said that Racine County had been alluded to as having sent a large number of petitions here asking for the incorporation of a homestead exemption into the constitution. Being a delegate from that county, he wished to say a few words before the vote was taken. It was true, a respectable number of petitions had been sent here from his county. He was acquainted with many of these petitioners, and they were men for whom he had a high respect and in whose judgment he had great confidence; yet in his opinion a majority of the people in that county were not in favor of this measure.

I believe (continued Mr. Jackson) I am as well acquainted with the public feeling of the people of that county on this subject as any man on this floor. Among the many letters I have received on the business of this convention, but one person has intimated his wish to have a specific exemption in the constitution. But we are now told to submit it separately to a vote of the people. Before I came here one, and only one, of my constituents advised me to go for a separate submission of this question. When it was first suggested to me I thought perhaps this might be the best way of disposing of

the matter. But upon more mature reflection I am convinced it is inexpedient to do so, and I believe the friends of this measure by urging it before the people now to be voted upon separately will defeat the object at which they profess to aim. Very many who are in favor of exemption are strongly opposed to putting it in the constitution. They say it should be left wholly to legislation, and if it is to be made a part of the constitution they will surely vote against it. I am in favor of exempting a homestead to the head of a family, and if a proper exemption law was submitted to a vote of the people by the legislature, I should vote for it. But if this question is submitted as proposed, I must vote against it; so will many others who are really in favor of a homestead exemption. It is my firm conviction, if submitted in this way it will be voted down by the people, and future legislatures will be told that the people have decided this matter and will be deterred from making provisions for such exemption. I repeat, a large portion of those in Racine County who are in favor of a real estate exemption are opposed to placing it in the constitution. To sustain this position I beg leave to read a short article which is found in a recent number of the Southport *Telegraph*. (Mr. Jackson here read from that paper.) Sir (said Mr. Jackson), I consider the *Telegraph* one of the ablest Democratic papers in the territory. Its editor (Mr. Sholes) is for exemption. Like the gentleman from Fond du Lac (Mr. Chase) he goes for abolishing all collection laws. He would exempt everything; yet it will be seen he is opposed to incorporating a particular exemption into the constitution. He thinks it would be better to leave it to future legislation, and I believe this is the feeling of the largest portion of the people of that county.

I am opposed to a separate submission of any part of the constitution. The people ought to know when they vote upon that instrument what it is to contain. Besides, the petitioners do not ask a separate submission of the question, and I feel justified in voting against this measure.

The question was then put upon ordering the article to be engrossed and read the third time, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 34, negative 32; for the vote see Appendix I, roll call 191].

The convention then resolved itself into committee of the whole for the

further consideration of No. 15, article on miscellaneous provisions, Mr. Castleman in the chair. After some time spent therein the committee rose and by their chairman reported progress and asked leave to sit again. Leave was granted.

The convention then resolved itself into committee of the whole for the consideration of No. 21, article on the schedule, Mr. Kinne in the chair. After some time spent therein the committee rose and by their chairman reported progress and asked leave to sit again. Leave was granted, when on motion of Mr. A. G. Cole the convention adjourned.

THURSDAY, JANUARY 27, 1848

Prayer by the Rev. Mr. Penman.

The journal of yesterday was read.

Mr. Lovell, from the committee on executive, legislative, and administrative provisions, reported No. 22, article on districting members of the legislature, as follows: "Section —. Until there shall be a new apportionment, the senators and members of the assembly shall be apportioned among the several districts as follows:

The counties of Brown, Calumet, Manitowoc, and Sheboygan shall constitute the first senate district and shall elect one senator.

The counties of Columbia, Marquette, Portage, and Sauk shall constitute the second senate district and shall elect one senator.

The counties of Crawford, Chippewa, St. Croix, and La Pointe shall constitute the third senate district and shall elect one senator.

The counties of Fond du Lac and Winnebago shall constitute the fourth senate district and shall elect one senator.

The counties of Iowa and Richland shall constitute the fifth senate district and shall elect one senator.

The county of Grant shall constitute the sixth senate district and shall elect one senator.

The county of Lafayette shall constitute the seventh senate district and shall elect one senator.

The county of Green shall constitute the eighth senate district and shall elect one senator.

The county of Dane shall constitute the ninth senate district and shall elect one senator.

The county of Dodge shall constitute the tenth senate district and shall elect one senator.

The county of Washington shall constitute the eleventh senate district and shall elect one senator.

The county of Jefferson shall constitute the twelfth senate district and shall elect one senator.

The county of Waukesha shall constitute the thirteenth senate district and shall elect one senator.

The county of Walworth shall constitute the fourteenth senate district and shall elect one senator.

The county of Rock shall constitute the fifteenth senate district and shall elect one senator.

The towns of Southport, Pike, Pleasant Prairie, Paris, Bristol, Brighton, Salem, and Wheatland in the county of Racine shall constitute the sixteenth senate district and shall elect one senator.

The towns of Racine, Caledonia, Mount Pleasant, Raymond, Norway, Rochester, Yorkville, and Burlington shall constitute the seventeenth senate district and shall elect one senator.

The third, fourth, and fifth wards of the city of Milwaukee, and the towns of Lake, Oak Creek, Franklin, and Greenfield in the county of

Milwaukee shall constitute the eighteenth senate district and shall elect one senator.

The first and second wards of the city of Milwaukee, and the towns of Milwaukee, Wauwatosa, and Granville in the county of Milwaukee shall constitute the nineteenth senate district and shall elect one senator.

The county of Brown shall constitute an assembly district and shall elect one member of assembly.

The county of Calumet shall constitute an assembly district and shall elect one member of assembly.

The county of Manitowoc shall constitute an assembly district and shall elect one member of assembly.

The county of Columbia shall constitute an assembly district and shall elect one member of assembly.

The counties of Crawford and Chippewa shall constitute an assembly district and shall elect one member of assembly.

The counties of St. Croix and La Pointe shall constitute an assembly district and shall elect one member of assembly.

The towns of Windsor, Sun Prairie, and Cottage Grove in the county of Dane shall constitute an assembly district and shall elect one member of assembly.

The towns of Madison, Cross Plains, Clarkson, Springfield, Verona, Montrose, and Greenfield in the county of Dane shall constitute an assembly district and shall elect one member of assembly.

The towns of Rome, Dunkirk, Christiana, Albion, Oregon, and Rutland in the county of Dane shall constitute an assembly district and shall elect one member of assembly.

The towns of Burnett, Chester, LeRoy, and Williamstown in the county of Dodge shall constitute an assembly district and shall elect one member of assembly.

The towns of Fairfield, Hubbard, and Rubicon in the county of Dodge shall constitute an assembly district and shall elect one member of assembly.

The towns of Hustisford, Ashippun, Lebanon, and Emmett in the county of Dodge shall constitute an assembly district and shall elect one member of assembly.

The towns of Elba, Lowell, Portland, and Clyman in the county of Dodge shall constitute an assembly district and shall elect one member of assembly.

The towns of Calamus, Beaver Dam, Fox Lake, and Trenton in the county of Dodge shall constitute an assembly district and shall elect one member of assembly.

The towns of Calumet, Forest, Auburn, Byron, Taycheedah, and Fond du Lac in the county of Fond du Lac shall constitute an assembly district and shall elect one member of assembly.

The towns of Alto, Metomen, Ceresco, Rosendale, Waupun, Oakfield, and Seven Mile Creek in the county of Fond du Lac shall constitute an assembly district and shall elect one member of assembly.

The precincts of Hazel Green, Fair Play, Smelsers Grove, and Jamestown in the county of Grant shall constitute an assembly district and shall elect one member of assembly.

The precincts of Platteville, Head of Platte, Centerville, Muscoda, and Fennimore in the county of Grant shall constitute an assembly district and shall elect one member of assembly.

The precincts of Pleasant Valley, Potosi, Waterloo, Hurricane, and New Lisbon in the county of Grant shall constitute an assembly district and shall elect one member of assembly.

The precincts of Beetown, Patch Grove, Cassville, Millville, and Lancaster in the county of Grant shall constitute an assembly district and shall elect one member of assembly.

The county of Green shall constitute an assembly district and shall elect one member of assembly.

The precincts of Dallas, Peddlers Creek, Mineral Point, and Yellowstone in the county of Iowa shall constitute an assembly district and shall elect one member of assembly.

The precincts of Franklin, Dodgeville, Porters Grove, Arena, and Percussion in the county of Iowa, and the county of Richland shall constitute an assembly district and shall elect one member of assembly.

The towns of Watertown, Aztalan, and Waterloo in the county of Jefferson shall constitute an assembly district and shall elect one member of assembly.

The towns of Ixonia, Concord, Sullivan, Hebron, Cold Spring, and Palmyra in the county of Jefferson shall constitute an assembly district and shall elect one member of assembly.

The towns of Lake Mills, Oakland, Koshkonong, and Farmington in the county of Jefferson shall constitute an assembly district and shall elect one member of assembly.

The precincts of Benton, Elk Grove, Belmont, Willow Springs, Prairie, and that part of Shullsburg precinct north of town one in the county of Lafayette shall constitute an assembly district and shall elect one member of assembly.

The precincts of Wiota, Wayne, Gratiot, White Oak Springs, Fever River, and that part of Shullsburg precinct south of town two in the county of Lafayette shall constitute an assembly district and shall elect one member of assembly.

The county of Marquette shall constitute an assembly district and shall elect one member of assembly.

The first ward of the city of Milwaukee shall constitute an assembly district and shall elect one member of assembly.

The second ward of the city of Milwaukee shall constitute an assembly district and shall elect one member of assembly.

The third ward of the city of Milwaukee shall constitute an assembly district and shall elect one member of assembly.

The fourth and fifth wards of the city of Milwaukee shall constitute an assembly district and shall elect one member of assembly.

The towns of Franklin and Oak Creek in the county of Milwaukee shall constitute an assembly district and shall elect one member of assembly.

The towns of Greenfield and Lake in the county of Milwaukee shall constitute an assembly district and shall elect one member of assembly.

The towns of Granville, Wauwatosa, and Milwaukee in the county of Milwaukee shall constitute an assembly district and shall elect one member of assembly.

The county of Portage shall constitute an assembly district and shall elect one member of assembly.

The town of Racine in the county of Racine shall constitute an assembly district and shall elect one member of assembly.

The towns of Norway, Raymond, Caledonia, and Mount Pleasant in the county of Racine shall constitute an assembly district and shall elect one member of assembly.

The towns of Rochester, Burlington, and Yorkville in the county of Racine shall constitute an assembly district and shall elect one member of assembly.

The towns of Southport, Pike, and Pleasant Prairie in the county of Racine shall constitute an assembly district and shall elect one member of assembly.

The towns of Paris, Bristol, Brighton, Salem, and Wheatland in the county of Racine shall constitute an assembly district and shall elect one member of assembly.

The towns of Janesville and Bradford in the county of Rock shall constitute an assembly district and shall elect one member of assembly.

The towns of Beloit, Turtle, and Clinton in the county of Rock shall constitute an assembly district and shall elect one member of assembly.

The towns of Magnolia, Union, Porter, and Fulton in the county of Rock shall constitute an assembly district and shall elect one member of assembly.

The towns of Milton, Lima, and Johnstown in the county of Rock shall constitute an assembly district and shall elect one member of assembly.

The towns of Newark, Rock, Avon, Spring Valley, and Center in the county of Rock shall constitute an assembly district and shall elect one member of assembly.

The county of Sauk shall constitute an assembly district and shall elect one member of assembly.

Precincts numbered one, three, and seven in the county of Sheboygan shall constitute an assembly district and shall elect one member of assembly.

Precincts numbered two, four, five, and six in the county of Sheboygan shall constitute an assembly district and shall elect one member of assembly.

The towns of Whitewater, La Grange, Richmond, and Sugar Creek in the county of Walworth shall constitute an assembly district and shall elect one member of assembly.

The towns of Troy, East Troy, Lafayette, and Elkhorn in the county of Walworth shall constitute an assembly district and shall elect one member of assembly.

The towns of Spring Prairie, Hudson, and Bloomfield in the county of Walworth shall constitute an assembly district and shall elect one member of assembly.

The towns of Geneva, Linn, and Walworth in the county of Walworth shall constitute an assembly district and shall elect one member of assembly.

The towns of Delavan, Darien, and Sharon in the county of Walworth shall constitute an assembly district and shall elect one member of assembly.

The towns of Lisbon, Menomonee, and Brookfield in the county of Waukesha shall constitute an assembly district and shall elect one member of assembly.

The towns of Warren, Oconomowoc, Summit, and Ottawa in the county of Waukesha shall constitute an assembly district and shall elect one member of assembly.

The towns of Delafield, Genesee, and Pewaukee in the county of Waukesha shall constitute an assembly district and shall elect one member of assembly.

The towns of Waukesha and New Lisbon [*sic*] in the county of Waukesha shall constitute an assembly district and shall elect one member of assembly.

The towns of Eagle, Mukwonago, Vernon, and Muskego in the county of Waukesha shall constitute an assembly district and shall elect one member of assembly.

The towns of Port Washington, Fredonia, and Clarence in the county of Washington shall constitute an assembly district and shall elect one member of assembly.

The towns of Grafton and Jackson in the county of Washington shall constitute an assembly district and shall elect one member of assembly.

The towns of Mequon and Germantown in the county of Washington shall constitute an assembly district and shall elect one member of assembly.

The towns of Polk, Richfield, and Erin in the county of Washington shall constitute an assembly district and shall elect one member of assembly.

The towns of Hartford, Addison, West Bend, and North Bend in the county of Washington shall constitute an assembly district and shall elect one member of assembly.

The county of Winnebago shall constitute an assembly district and shall elect one member of assembly. "

The article was read the first and second times, and ordered printed.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 16, article on exemption.

Mr. Case, from the select committee on that subject, made the following report, which was read, to wit:

"The select committee to whom was referred the resolution to inquire into the propriety of providing for a sale of a portion of journals of this convention report that a subsequent resolution of the convention having provided for the disposal of all the said journals, the committee ask to be discharged from the further consideration of the subject.

"Respectfully submitted,

S. S. CASE
S. A. DAVENPORT
JOHN O'CONNOR"

Mr. Castleman presented a petition of W. W. Brown and others relative to submitting again the old constitution to the votes of the people. Mr. A. G. Cole moved that the petition be laid upon the table, which was agreed to.

Resolutions were introduced and read as follows, to wit:

By Mr. Lewis: "*Resolved*, That each member be allowed double the number of papers containing the printed constitution, at the time of the adjournment, that is now authorized weekly by the convention."

By Mr. Carter: "*Resolved*, That the use of this hall be tendered to the Rev. Mr. Read on next Sabbath at half past ten o'clock A.M. for divine services."

Mr. Case moved a reconsideration of the vote taken yesterday on ordering to be engrossed No. 16, article on exemption.

Mr. Lakin moved a call of the convention, which was ordered, and Messrs. Colley, Featherstonhaugh, [Fenton, Jackson], Kennedy, Kilbourn, Kinne, McClellan, Nichols, and Prentiss reported absent.

The sergeant at arms was sent for the absentees.

Pending the proceedings under the call, Mr. Castleman took occasion to point out what he believed to be an error in the journal of January 14. His name appeared on the journal as voting in the affirmative on the final passage of the article on banks and banking. He believed that he voted in the negative. If he had voted in the affirmative he had done so through mistake.

The absentees having been reported in attendance, the question was put upon reconsidering and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 35, negative 31; for the vote see Appendix I, roll call 192].

Resolution No. 1, introduced by Mr. Lyman on the twenty-fourth instant, was taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

Resolution No. 2, introduced by Mr. Estabrook on the twenty-fifth instant, was then taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 41, negative 24; for the vote see Appendix I, roll call 193].

Mr. Dunn, from the committee on that subject, made the following report, to wit:

"The committee appointed to ascertain and report the expenses of the commission issued by the committee of the convention on the contested seat of the Hon. John O'Connor of Lafayette County by William S. Hamilton of the same county, and also to inquire into the expenses incurred therein by the sitting member and report the amount which in their opinion he is reasonably entitled to receive therefor, respectfully report that from the evidences before us the expenses incurred under the commission of the sitting member and of contestant are as follows, to wit:

Henry Waggoner, commission bill presented for sixteen days' services in taking depositions, $5.00 per day, $80, reduced to	$64.00	
Samuel Crawford, commission fees charged on deposition returned	5.00	
John K. Williams, for returning commission and depositions to the capitol	12.00	
		$ 81.00

EXPENSES OF SITTING MEMBER

John K. Williams, attorney for Hon. John O'Connor, for services in taking depositions before commissioners, sixteen days	$64.00	
David W. Jones, attorney for Hon. John O'Connor, for services in taking depositions before commissioners at Elk Grove, Shullsburg, traveling and expenses	20.00	
		$ 84.00

EXPENSES OF WILLIAM S. HAMILTON CONTESTANT

Paid to witnesses, officers, etc., per vouchers	$14.87	
H. H. Beeman, deputy sheriff, for serving subpœnas	9.80	
		$ 24.67
		$189.67

"Your committee have reduced the charges of Commissioner Waggoner and the attorneys of the Hon. John O'Connor to what we deem to be reasonable for the services rendered. The other charges are reasonable and proper and in the opinion of your committee should, with the charges as reduced, be allowed.

"Your committee, therefore, recommend the adoption of the following resolution: '*Resolved*, That Henry Waggoner, commissioner appointed by a committee of this convention to take and report testimony, be and he is hereby allowed the sum of $64 for services rendered; Samuel Crawford, also a commissioner, be and he is allowed $5.00 for like services; John K. Williams, appointed by Commissioner Waggoner to convey to the capitol the commission and depositions taken, be and is hereby allowed the sum of $12 for performing the service; Hon. John O'Connor, sitting member, be and he is hereby allowed the sum of $84 for his reasonable expenses in defending the contest of his seat; and that William S. Hamilton, contestant, be and he is hereby allowed the sum of $24.67 for expenses in fees to witnesses and officers incurred in conducting the contest; and that the president certify the respective claims for payment.'"

No. 16, article on exemption, was then taken up, when Mr. Case moved to amend section 1 by striking out all after the word "dollars" in the second line down to and including the word "dollars" in the fourth line.

Mr. Beall spoke in opposition to the amendment, which he said had been concocted in the Whig caucus the previous evening for the purpose of killing the article.

Mr. Reed said he would record his vote against the proposed amendment. He wanted nothing of the kind in the constitution and believed that the people were able to control themselves in this matter and regulate it through the legislature. As for the assertion of the gentleman from Fond du Lac that the amendment had been concocted in the Whig caucus of the night before, it was utterly without foundation. That subject had not been considered at the caucus.

Mr. O. Cole said that the notion of this amendment being a Whig caucus measure had its sole foundation in the fertile imagination of the gentleman from Fond du Lac (Mr. Beall), which frequently conjured up ghosts, hobgoblins, and chimeras dire. He did not envy him either his imagination or his associates.

Mr. Judd spoke.

Mr. Castleman said he was not at all surprised, after what he had seen for the last few days, that the friends of this measure should charge his colleague (Mr. Case) or any other man with bargain and corruption. His colleague should have remembered yesterday the story of poor old Tray—that he suffered for all the evil doings of his companions. The company in which his colleague was found yesterday knew better than any other the charges to which his associates laid him liable, and they had charged him with

bargain and corruption. He did not doubt the purity of his colleague's motives in acting with them yesterday, but hoped it would be a lesson to him in future. He would support the amendment because it approximated the article to the simple question of homestead exemption, unincumbered by other exemptions. The other matters were already submitted in the bill of rights—there left to the people. Its friends wished to take it out of the hands of the people by now stealing a march on them and getting it into the constitution where people could not reach, alter, or repeal it, after having tried it.

Mr. Case said that the gentleman from Fond du Lac (Mr. Beall) had charged directly that this amendment was the result of a caucus held the last evening. On this subject he would say that he had prepared the amendment yesterday and in the scramble for the floor had not an opportunity to present it. He had moved the reconsideration of the vote this morning for the purpose of introducing it. He could say with the gentleman from Fond du Lac on his right (Mr. Chase) that he paddled his own canoe; he acted without concert with anyone. He wished he could say as much for the gentleman from Fond du Lac on his left (Mr. Beall). Petitions had been sent in asking for a homestead exemption. He wished if they passed any exemption measure, to pass that which was asked for. His colleague (Mr. Castleman) had said he was in the situation of poor Tray in the story. So far as the question of exemption was concerned, he wished always to be so. He was in favor of the principle of exemption and always had been. When he was a member of the legislature of New York he fought for this principle as it was now being contended for here.

Mr. Fitzgerald hoped the amendment would not be adopted. If we were to have any exemption at all, it had better be as it was in the article. The very provision made by the amendment defeated the old constitution. He would be compelled to vote against it.

Mr. Harvey desired to counsel the friends of exemption not to allow the suggestions of their fears to appear to them as evidence of facts. The question of exemption had not come up in the caucus of the preceding evening. He would vote against this amendment and had steadily voted against all the amendments which had been offered to the article. There were gentlemen here who were attached to the principle of exemption and who had brought in the article as they wished it to stand. He was desirous of giving them

the benefit of a full expression of the opinion of the convention on the article as they had presented it; he wished that those who had manufactured the thunder should have the full advantage of it. He was not moved by fears of any of the consequences suggested by the gentleman from Dodge. He was anxious only that the animal should not by any amendment lose its tail and be no longer a tadpole.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 8, negative 58; for the vote see Appendix I, roll call 194].

Mr. Chase moved to substitute for the [whole] article the following, viz.: "The legislature shall at its first regular session after the adoption of this constitution provide by law for the exemption from forced sale for any debt or liability contracted after the passage of such law, of a limited amount of land, the same being the homestead of any family, or inhabitants of the state, or in lieu thereof, at the option of such person, other real or personal property of equal value."

Mr. Chase said that he was not one of those who were prepared to say on this or any other subject which he held dear and considered important, that he must have it in a certain form or abandon it altogether. It had been held by certain friends of the measure here that they must have it in the particular form which they desired or let those who opposed it bear the consequences. If it was the intention of these gentlemen to make political capital out of this measure, he washed his hands of it entirely. He wished to create no divisions or factions in parties. He founded his course on principle. If they could not obtain the best possible system of exemption they must endeavor to obtain the next best to it. He was sorry to hear allusions made to political caucuses and political divisions. He was willing to believe that every Whig, as well as every Democratic member, was an honest man. He was willing to concede as much honesty to them as he claimed for himself, nor did he believe that they were engaged in any logrolling to make political capital. His principles were independent of other persons, and, as he believed, founded on truth and justice.

He had offered the substitute for certain reasons which must be evident to all members. It provided for a positive exemption. It created in the first place a homestead exemption and directed the legislature to pass a law carrying it into effect. All that the friends

of exemption asked was thus provided for, and the choice was left with the debtor what kind of property he would have exempted. It was positive in its nature and would meet all cases that could arise, and would not be submitted as a separate article to the people, thus avoiding one chance of defeat. Many a man who was friendly to the principle of homestead exemption would vote against the article at the polls on the ground that it was imperfect. Such would not be his case. He would vote for it as it stood. The substitute provided for an exemption of the homestead if the applicant so desired. It provided for the law but did not incorporate it in the constitution. There were many who preferred that it should be so arranged. There were many who desired that exemption might be made a subject of legislation instead of being incorporated in the constitution, because, if the latter course were adopted, the progression which was being rapidly made among the people would soon travel beyond the bounds fixed in the constitution. This he considered a well-founded objection and could not have voted for the article if the matter of further exemption had not been left open to the legislature. He believed in the progress of the age and of human nature in goodness and in truth. There was one other feature in his substitute to which he wished to call the attention of the convention. It did not fix the amount of dollars and cents. That was left open to the legislature to determine on; and it declared the principle that the legislature should provide for an exemption such as should meet the demand of equity and justice. It contained also the principle of equality, applying equally to persons holding real or personal estate, so that all might share in its benefits.

He would take one moment to allude to his course on this subject and on the proposition of the abolition of all laws for the collection of debts. He was one of those who were in favor of the latter principle. He had sent petitions to the legislature of the territory, asking the abolition of such laws; and when this subject was up yesterday he should have stated what might have had a bearing on the present subject—that these petitions were referred to a committee of the legislature, of which the honorable president of this convention was then chairman, and that he reported favorably on them. That gentleman deemed it his duty to take a different course from himself on the present subject, but he believed him to be an honest advocate of the principle of abolishing the laws for the collection of debts. He had introduced this substitute, not to produce

discord and division among men who advocated the principle of exemption, nor to produce dissension among parties, but in order to secure for the people, by law, the homestead exemption; and he hoped that it would not be voted down in order that gentlemen might make political capital out of it, or that any individuals might be killed off from the positions which they occupied in the dominant party. He trusted that those who had professed themselves friendly to the principle of exemption would not vote against it through any such motives.

Mr. Lakin moved to amend the substitute by striking out after the word "legislature" the word "shall" and inserting the word "may."

He said that the advocates of exemption on this floor had inquired in loud language whether those who were opposed to the principle were afraid to trust the people. It was not we, but they, who were afraid to trust them. We proposed, and all along had proposed, that this matter belonged directly to the people, who through their legislature could make just such a law as would meet their wants. The advocates of the measure proposed to tie the hands of the legislature. They say the legislature shall enact such a law. Is this the language of Democracy—of young Democracy? Yes, it is the language of those who call themselves "Progressives." It appears to me to be the language of dictation. They talk loudly of tyranny and oppression, but themselves tread in the very footsteps of those who tied the hands of the people.

He believed the gentleman from Fond du Lac (Mr. Chase) was consistent and honest in his views. But how gentlemen who held different doctrines from him and believed in individual rights and equal laws could maintain this principle was too much for him to understand. He for one was willing to trust the people; and he would ask those gentlemen who made such loud professions of progressive Democracy what would be their course if they should be members of the legislature, and the people should call on them to abolish this very measure. Would they refuse, and brave that fiery furnace of popular opinion with which they had threatened the opponents of this measure on this floor? They would find the fire too hot. It would melt off their dorsal appendages.

He was in favor of a practical exemption, but the proposed measure would shield the scoundrel who might cheat another of five hundred dollars, but did not protect the honest laborer. The gentle-

man said that it was equal in its operation, because it gave the applicant a choice whether to exempt an amount in real estate or in money. For that very reason it was unequal. The object of exemption was to protect what it was necessary for a man to have. But it was not necessary for every vagabond to have five hundred dollars in his pocket, which he may have obtained by fraudulent means. It was unequal inasmuch as it secured the same privileges to the single man, who had no one to look out for but himself, that it did to the man of family. If he had as many arms as Briareus and as many stones as were to be found on the rock-bound coast of New England, he would hurl them all at such a measure.

Mr. Beall spoke. Mr. Judd spoke.

Mr. Chase was aware that whoever might be the ill-omened Chatres [Samson?] who dared to touch this favored bantling he might expect that the walls would fall upon his devoted head. He knew the hoary locks would be sure to be shaken at him. He was prepared for it. He could not but be reminded of the lines of Shakespeare:

> Who steals my purse, steals trash;
> 'Twas mine—'tis his—and has been slave to thousands.
> But he that filches from me my good name,
> Takes that which ne'er enriches him,
> But leaves me poor indeed.

In whose lips did Shakespeare place these words? In those of Iago. The character and the sentiment may be applied here where they fit best. He knew it was intended by the gentleman who had last spoken that they should take their measure or nothing. It was not for the interests of the poor man they were laboring. All they cared for was the amount of political capital they could make. He did not insist that the vote should be taken on the proposition as contained in the article alone, and if it failed, that the result should be visited on the heads of the opponents of the measure. He thought half a loaf was better than no bread; and if he could not obtain the proposition as he wanted it, he would satisfy himself with what was next best. In this he considered that he was acting the part of the friend of the poor man. If those gentlemen who had last spoken attempted to steal a march on him, they would find themselves on the wrong track. Honesty and principle would always be borne out in the end. He was honest and consistent in his course and was not connected with any political clique of intriguing politicians.

Mr. Larrabee was opposed to the amendment. He was sorry that he found himself forced to differ from his colleagues and friends on this floor; but he felt obliged to vote for the substitute offered by Mr. Chase. If the article adopted yesterday could not be retained, he thought it the part of wisdom to take the next best proposition to it. He was satisfied the original article would not pass. The proposition now introduced by Mr. Chase was the next best and he would vote for it.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 22, negative 41; for the vote see Appendix I, roll call 195].

Mr. Lovell moved to amend the substitute by striking out all after the word "state" and inserting the following: "*Provided*, That no such law shall have any force or effect until it shall have been submitted to a vote of the people and shall have been approved by a majority of the qualified electors voting on that subject. And *Provided*, further, That nothing in this section contained shall be so construed as to prohibit the legislature from exempting such other property from sale upon execution as they may deem expedient."

Mr. Lovell said he could not vote for a proposition which would exempt any other property save the homestead. He could not go for a proposition which would give to knaves the right of hoarding up property and not protect the poor. If the law was made, let it be the poor man's law and not one to protect the speculator. Let it be what it pretended to be; and if a majority of the people voted for it, let it become the law of the land. He believed that the clause in the original article, making it optional with the applicant to protect five hundred dollars in other property besides real estate, was inserted with a view to buying up the votes of dishonest men.

Certain gentlemen on this floor had seen fit in the course of their remarks on this subject to indulge in denunciation. At first, they had applied it pretty liberally to those who had voted against the article. Now, they cast it against the friends—and he believed the honest friends—of homestead exemption. Now the gentleman from Fond du Lac (Mr. Chase) offered a proposition which embraced all that had been asked—a homestead exemption. Yet these gentlemen professed themselves opposed to the proposition. Why? Because it cut out that part of the original article by which votes could be bought up and capital made. He believed the original article in all its details was a thing to catch votes, divide parties,

and build up men. If all that these gentlemen wanted was a homestead exemption, let them vote for the proposition submitted by Mr. Chase. If it should be amended as he proposed, he would vote for it himself.

Mr. Chase said he had no special objection to the amendment proposed by the gentleman from Racine (Mr. Lovell). The principal matter in which it differed from his proposition was the feature of a separate submission to the people. His chief objection to the amendment (and that was one hardly sufficient to induce him to vote against it) was that it would involve some delay.

Mr. Doran said that as they had gone on and progressed in the discussion of this subject they had got back to the point from which they originally started, and found that the legislature had full power over the matter of exemption. The only conviction which had been forced on his mind by the discussion of this subject was that the present was a progressive age and that the gentlemen who advocated the exemption article wished to resist this progress by a constitutional enactment. In a few days they had gained to their side of the question sixteen votes. Starting with sixteen, they had suddenly come up to thirty-two. Would not the historian who should hand down the history of this convention accord the result to the coalition by which this result was effected? He was delighted to see his friend from Fond du Lac (Mr. Chase) wash his hands of this coalition as soon as he possibly could.

They now found themselves, after two or three days' discussion, just at the point from which they had started. If, as some gentlemen had said, the force of progression was so great that the torrents of Niagara could not check it, why, in the name of wonder, would not the friends of this measure leave it in the hands of the people? Simply because certain gentlemen must have the credit for the measure. It was not the poor man's cause they advocated, but political capital which they were endeavoring to make for themselves.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 33, negative 33; for the vote see Appendix I, roll call 196].

Mr. Sanders moved to amend the amendment by substituting therefor the following, viz.: "Section —. The legislature, at its first regular session after the adoption of this constitution, shall pass a law providing for the exemption of the homestead of a family from forced sale on execution, for any debt or

debts growing out of or founded upon contract made after the approval of such law: *Provided,* That such exemption shall not affect in any manner any mechanic's or laborer's lien or any mortgage lawfully obtained. The legislature shall at the time of the passage of said law provide for the submission thereof to the people, at the first succeeding general election.

"Section —. No such law shall take effect until it shall at a general election be submitted to the people and have received a majority of all the votes cast for and against it at such election; and if such law shall be approved it shall thereafter be in force until repealed or amended by a like vote."

And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 27, negative 38; for the vote see Appendix I, roll call 197].

The question was then put upon the adoption of the substitute of Mr. Chase, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 17, negative 49; for the vote see Appendix I, roll call 198].

Mr. Lakin moved a call of the convention, which was ordered, and all the members reported as present. Mr. Folts moved to amend the article by substituting therefor the following: "The legislature may exempt from forced sale on execution for debts hereafter created such a sum as they may deem expedient, to consist of real or personal property; but such exemption shall be equal in amount to all persons."

Mr. Larkin said the amendment of his friend from Jefferson (Mr. Folts) covered the entire ground. Now none of the friends of the measure could complain. Exemption was made equal to all—men, women, and children—white, black, and copper-colored—all must now vote for it.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 24, negative 42; for the vote see Appendix I, roll call 199].

Mr. Folts moved to amend section 2 by adding the following: "But such exemption shall be equal in amount to all persons"; which was agreed to.

The question was then put upon ordering the article to be engrossed and read the third time, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 30, negative 37; for the vote see Appendix I, roll call 200].

Mr. Lovell moved a reconsideration of the vote just taken.

Mr. Lovell said as this subject had occupied four days of the session, and he feared the ghost of it might still haunt them, he wished to lay it forever and therefore he would move a reconsideration.

The motion was disagreed to.

On motion of Mr. Larkin ["Lakin" in MS] the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

Mr. Sanders moved that the motion made by him on a previous day for a reconsideration of the vote on the passage of the article on boundaries be taken up, which was agreed to. The question was then put upon reconsidering, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 34, negative 24; for the vote see Appendix I, roll call 201].

Mr. King moved to recommit the article to the committee with instructions to amend the same as follows:

BOUNDARIES

"Strike out section 1.

"Amend section 2 by striking out 'aforesaid' in second line and inserting in lieu thereof the words 'entitled "An Act to enable the people of Wisconsin Territory to form a constitution and state government and for the admission of such state into the Union. Approved August 6, 1846." '

"Also add to section 2 the following: 'And *Provided*, further, That the admission of this state into the Union, according to the boundaries described in the act of Congress aforesaid, shall not in any manner affect or prejudice the right of this state to the boundaries which are fixed and established for the fifth division or state of the Northwestern Territory, in and by the fifth article of compact in the ordinance of Congress for the government of the territory northwest of the river Ohio. Passed July 13, 1787.' "

Mr. Dunn said he had given his views on this subject before and he did not wish to waste words upon it now. He gave it as his sincere belief that if we did not accept definitely the boundaries prescribed by Congress we could not get admitted into the Union. This was not an unfounded opinion. It had been tried and proved so in other parallel cases. No state formed out of the territory northwest of the Ohio River had applied to Congress for admission without having its boundaries accurately defined in the constitution, except Michigan, and she was refused admission for that reason and kept out till she accepted the boundaries prescribed. This was a precedent exactly in point and decisive. Another reason was that an unsettled boundary would seriously embarrass us in establishing our courts and defining their districts and the limits of their jurisdiction. There was no constitutional means to settle questions of this nature, and he trusted no one wished to see the scenes of the "Toledo War" reënacted among us. We had settled this boundary

question once, and he hoped it would not be disturbed again without some new and powerful reason.

Mr. King said he regarded this as a question of right and not of expediency. If we were justly entitled to this disputed territory, it was incumbent on us to pursue that right; if not, then we should abandon it. He did not agree with the opinions of the gentleman from Lafayette (Mr. Dunn) in regard to our rights and the prospect of obtaining them, but he agreed with him in this, that the question ought not to be disturbed now without some new and valid reason. He thought that that reason existed in the fact that it had been discovered that the proviso requiring our assent to certain boundaries was an interpolation in the act of Congress, and we had acted upon the question under a misapprehension. The amendment he proposed accepted the boundaries prescribed by Congress, reserving the right to have our claims adjudicated hereafter by a competent tribunal. He thought we were bound to do as much as this.

Mr. Sanders thought the amendment would not accomplish the object of the mover. The convention must first settle whether they would repudiate the act of Congress of 1787. This he apprehended they would not do, as they would thereby repudiate all the authority they acted under. The terms of this act and of subsequent ones under it must be complied with. We could claim nothing on the score of right; we must ask it as a favor. If Congress could be induced to admit us and still leave our southern boundary rights for subsequent determination, he would be in favor of it, and he thought it might be done.

Mr. Rountree called attention to the fact that the state of Ohio was admitted into the Union with a boundary not definitely settled. He read an extract from the act of Congress in relation to it. He thought the gentleman from Lafayette was mistaken in the statement he had made. By the act of Congress of 1846 there were three specifications we were required to assent to. The acceptance of certain boundaries was one of them. He thought we should at least ask for what we conceived to be our right and not debar ourselves from all further claim if it was to be avoided.

Mr. Chase thought the proposition of the gentleman from Milwaukee (Mr. King), accepting and yet not accepting the boundaries prescribed by Congress, was puerile and absurd. He thought it was useless to encumber our admission by any such article.

Mr. Dunn said that the gentleman from Grant (Mr. Rountree) was himself much mistaken in regard to the admission of Ohio with unsettled boundaries, as he could not fail to see by a careful reading of the act.

Mr. Richardson: Mr. President—I am not inclined to think that there is any material difference of opinion between us and the most of our opponents. I believe that nearly all acknowledge the right of Wisconsin to all the territory embraced by the boundaries as prescribed in the Ordinance of 1787. But gentlemen upon this floor tell us that inasmuch as Congress has passed an act defining other boundaries than those fixed by said ordinance, Congress will not admit Wisconsin into the Union unless she consents to accept of said last fixed boundaries. Now I will, as I have on two former occasions, deny that we have any authority for any such conclusion. Gentlemen in taking this position virtually assume that Congress will not do justice to Wisconsin or that she has no rights beyond any boundary that Congress may fix for her. I for one do not believe that Congress will refuse justice to Wisconsin, and hence the propriety of adopting the proposition of the gentleman from Milwaukee. It asks for nothing more than that our rights, guaranteed by the Ordinance of 1787, shall not be prejudiced by our acceptance of the boundary line set forth in the act of our admission as a state.

Now, Mr. President, I contend that the irresistible conclusion is this, that if Wisconsin has rights to territory not included within the boundaries fixed by Congress in the act of 1846, she will be admitted with an open boundary, and the matter will be adjudicated and justice will be done. And if Wisconsin has no rights to any territory which Congress sees fit to withhold, then where is the propriety of refusing us admittance upon the conditions we ask? We ask only that our rights be not prejudiced, nor our claims; and, if we have no rights, Congress is aware of the fact and will have nothing to fear from our admission upon our own proposition. But the honorable gentleman from Racine (Mr. Lovell) denies, at least virtually, that Congress will not [*sic*] do us justice in this matter and cites Michigan as an instance where injustice was done in a like case. Now whether justice was done Michigan or not, I contend that Congress did by its action in said case virtually acknowledge the right of Michigan to the territory in dispute between her

and Ohio. The honorable gentleman from Racine and other honorable gentlemen further argue that if we have rights, as contended for by us who go for the adoption of the amendment offered by the honorable gentleman from Milwaukee (Mr. King), it is inexpedient to assert our rights, lest we are kept out of the Union for some two or three years, and the honorable gentleman from Racine has made an appeal to every gentleman upon this floor to know whether anyone is bold and daring enough to assume the responsibility of doing an act that may have the effect to prevent our admission into the Union for some time and thereby prevent Wisconsin casting an electoral vote for president in 1848. In answer to the gentleman's appeal, I as one of the representatives of the people am now ready to stand up here in my place and take any responsibility upon myself which will result from asserting the rights of my constituents, fearless of consequences. Our honorable president has given as his opinion that Wisconsin has no right as to territory, except so much as Congress may think proper to grant to her, and gives as a reason for holding this doctrine, that in his opinion the common consent provided for in the Ordinance of 1787 has been given for us by the Congress of the United States—hence we must come to the conclusion that said ordinance is a nullity. Now, sir, I would ask our honorable president whether he believes that Congress has any right to form more than five states within the Northwestern Territory.

Mr. Lovell said the whole course of congressional legislation showed that there was no chance of our getting admitted into the Union with an unsettled boundary. But the present posture of affairs made the chance more desperate still. There were many important questions on which the North and South were divided; and the South could command a sufficient majority to keep out an ally to the North on every plausible pretext. In relation to the presidential question, also, the Whigs would be united against us in the same way. And again, Illinois, Ohio, and other states were interested against us, or had taken adverse positions in former times, and would not now desert them. Under these circumstances he thought there was not the slightest ground to hope that we could be admitted without accepting the prescribed boundaries, and he thought it would be folly to hazard our admission in pursuit of such a phantasm.

Mr. Judd spoke.

Mr. Rountree reminded the convention that the very proviso requiring our acceptance of certain boundaries had been struck out by Congress. That showed that our acceptance was not looked upon by them as an unalterable condition.

Mr. Doran said if we had any right to the territory we claimed on our south boundary, we ought to preserve that right, regardless of the political considerations mentioned by the gentleman from Racine (Mr. Lovell). He thought Congress was not the only tribunal. If so the Ordinance of 1787 was a nullity. The Supreme Court was the ultimate and proper tribunal to which we had a right to appeal, and he would not vote for giving up our claims without an effort to have them properly adjudicated.

Mr. Martin said he felt called upon, as reference had been freely and frequently made to the act of 1846, under which we were framing a constitution preparatory to our admission into the Union as a state, to make a few suggestions upon the proposition before the convention. He apprehended gentlemen were mistaken when they declared that an interpolation had been made in that act. The bill, as originally reported in Congress, was in the same language as the printed copy before us, and the mistake occurred, he presumed, by copying from the bill instead of referring to the form in which it finally passed and was published among the acts of that session. When the bill was under consideration in the House of Representatives, the clause requiring the assent of Wisconsin to the boundaries therein prescribed was struck out. The reason for it was this: Congress had or had not the right to fix the limits of the remaining state to be formed in the old Northwestern Territory. If she had the right, there was no necessity of asking Wisconsin to assent to and accept the boundaries prescribed in the act. If, on the contrary, she possessed no such right, the definition of limits contained in that act would be a gross injustice, as it deprived the people of what legally and justly was theirs under the ordinance. Under this view, and because the proviso might be regarded as an admission that Wisconsin had territorial rights which were about to be infringed, it was struck from the bill by a decisive vote.

The better opinion of men who have examined the subject with great care is that the power of Congress on this question of boundaries is absolute and unqualified. The Ordinance of 1787, which is declared to be irrepealable without common consent, has been

altered with that sanction. Illinois was admitted into the Union with us. Much the greater portion of the people within the limits of the "fifth state" (as it is called) under the article of compact have always been and are now residents in that part of it within her limits and assent to her jurisdiction. There are half a million inhabitants residing west of Lake Michigan and north of the line drawn through the southerly bend of that lake, of whom 300,000 are within the bounds of that state. Can we, then, constituting the minority of 200,000, expect to control that majority and set up a claim to that line, with any propriety? Besides, the bounds of Illinois were fixed with our assent given by Congress as our representative in the arrangement. He thought it was clear that the common consent had already been given, which was necessary to alter the provisions of the ordinance; and if it had not, the people residing within the limits of Illinois and comprising the majority of those interested in the question were those who should demand any right secured by her articles of compact.

He did not think we could now be successful in prosecuting a claim to the whole territory up to the British line on the northwest. He was in favor of requesting a change of boundary so as to include the valuable country in the valley of the St. Croix and thought Congress would accede to our request. If we ask too much, we shall be thrown back upon the line mentioned in the act of 1846. But this small tract will leave our state about 52,000 square miles still. It required only a slight addition to the size of our state, unimportant to any but ourselves. That portion of the territory was clearly never contemplated as a part of the country over which the ordinance was to operate, as the whole has been at different times in dispute between the United States and Great Britain, and its extent was never fully settled between the parties until 1842. It is entirely idle, then, to set up a claim to it under that instrument. Let us adhere to the proposition contained in the article we have adopted, and no delay will occur in our admission as a state. When the act authorizing us to form a state government was before the House, he had, as delegate, and out of respect to the opinions of a large portion of our citizens, proposed an amendment allowing this convention to fix such boundary on the north as they should think proper; not, however, exceeding the limits of the present territory of Wisconsin. This proposition met with favor in the committee, but was rejected on a call of the ayes and noes in the House, by a

vote of more than two to one. He did not feel authorized to surrender voluntarily any part of what is called the "fifth state" and insisted upon our being entitled to the whole. But from all that transpired on that occasion he was satisfied that, if we assume that ground now, and present the issue in our constitution, it will delay our admission into the Union until we yield our position and consent to the line given in the act of Congress. Iowa had set up a similar claim to the country north of her present limits and was compelled to abandon it before she could procure the sanction of Congress to her organization as a state.

The example of Michigan had been cited to show that if we assert the right to all the territory claimed we may force from Congress an equivalent for that portion of it of which we have been deprived. The cases are by no means parallel. Ohio was authorized to form a state government with the ordinance line on the north. Michigan as early as 1805 was made a territory with the same line as her southern boundary. She had possession of the country and continued to exercise jurisdiction over it for thirty years and until she applied for admission into the Union. The country claimed by her was populous, and she had her courts and municipal authorities established in it. No power short of physical force could stay the execution of her laws or introduce those of another state to supersede them. This force was applied, and she resisted it successfully, and in this attitude she presented herself before Congress for admission—a position she could not be induced to abandon until her claim was amicably adjusted by granting her an equivalent for the territory she surrendered to Ohio.

The condition of the question so far as Wisconsin is concerned is entirely different. All that we might claim beyond the boundary prescribed in the article we have adopted upon that subject would be either in the adverse possession of Illinois or a barren and inhospitable tract of country over which our jurisdiction would be merely nominal. On either side our authority would not extend in fact, and we should hold it only by a naked claim under a disputed and very questionable right. No one can anticipate that we could ever succeed in gaining the territory or making our jurisdiction over it complete. The only consequence of our asserting the claim set forth in the amendment would be to delay our admission into the Union until we abandoned it.

Mr. Dunn moved a call of the convention, which was ordered, and Messrs. A. G. Cole, Colley, Estabrook, Fenton, Harvey, Kilbourn, and Root reported absent. Messrs. Kilbourn and A. G. Cole were excused from their attendance.

Mr. Kinne moved that all further proceedings under the call be dispensed with, which was agreed to.

Mr. Sanders moved to amend instructions, as follows: "That committee amend by striking out in first line 'ordained and,' and 'consent and' in the second line, and also all between the word 'same' in the eleventh line to the word 'viz.' in the thirteenth line, and insert in lieu thereof 'shall be the boundaries of the state of Wisconsin,' and also strike out section 3."

Mr. Reed said that as delegates to form a constitution they had no authority to give up any rights which Wisconsin might possess. The amendment of the gentleman from Milwaukee merely reserved the privilege of making our rights appear hereafter, if we could. It did not require the assent of Congress to any specific claim. He thought we should at least do so much.

The motion was disagreed to.

The question was then put upon the motion to refer with instructions, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 14, negative 46; for the vote see Appendix I, roll call 202].

The question was then put upon the passage of the article, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 46, negative 12; for the vote see Appendix I, roll call 203].

The report of the committee on revision, on the article boundaries, was then taken up, and the amendments reported by the committee were severally concurred in.

Mr. Dunn, from the committee on revision and arrangement, by leave made the following report, to wit:

"The committee on revision and arrangement respectfully report the articles on education and school funds and on banks and banking, with corrections and suggestions, in which they ask the concurrence of the convention.

Education and School Funds

"Title. Strike out 'and school funds.'

"Section 2. Suggest striking out 'except in time of war' in sixth line; substitute in seventh line 'collected' for 'assessed.' Strike out in fifteenth line 'lying within the state.' Transpose in the seventeenth line 'grants' so as to read 'two grants last mentioned,' etc.

"In first paragraph of subdivision, second line, strike out 'town' and insert 'school,' and strike out in third line 'school,' and substitute 'common' for 'primary' in first line.

"Section 3. In second and third lines strike out 'throughout the state'; also, 'equally' in the fourth line, and in the fifth line 'to whom tuition shall be gratis,' and insert after 'fee' in fourth line 'and without charge per tuition'; substitute 'them' for 'in said schools' in last line.

"Section 4. In second line substitute 'common' for 'district' or 'primary' and also [alter?] the whole section so as to read 'Each town and city shall be required to raise by tax annually for the support of common schools therein a sum not less than one-half of the amount received by such town or city, respectively, for school purposes, from the income of the school fund.'

"Section 5. In the third line substitute 'common' for 'district'; and in same line 'proportion' for 'ratio.' In seventh line strike out 'in manner aforesaid.' In ninth line substitute 'maintained' for 'kept up.'

"Section 6. In eighth line strike out 'irrevocably'; and in ninth line 'aforesaid.'

"Section 7. In third line substitute 'therefrom' for 'from the same.'

"Section 8. Alter so as to read: 'Provision shall be made by law for the sale of all school and university lands, after they shall have been appropriated; and when any portion of such lands shall be sold and the purchase money shall not be paid at the time of sale, the commissioners shall take security by mortgage upon the lands sold for the sum remaining unpaid, with seven per cent interest thereon, payable annually at the office of the treasurer. The commissioners shall be authorized to execute a good and sufficient conveyance to all purchasers of such lands and to discharge any mortgages taken as security when the sums due thereon shall have been paid.

" 'The commissioners shall have power to withhold from sale any portion of such lands, when they shall deem it expedient, and shall invest all moneys arising from the sale of such lands as well as all other university and school lands in such manner as the legislature shall provide, and shall give such security for the faithful performance of their duties as may be required by law.' "

Banks and Banking

"Section 1. Strike out in fifth line 'in accordance with the following section of' and insert 'as provided.'

"Section 2. Strike out in first line 'of this state shall have power to' and insert 'may'; strike out 'said' and insert 'no such grant or'; and substitute 'any' for 'no' before 'force'; transpose the words 'on that subject' so as to stand before the words 'at such election.'

"The committee suggest that the article may be added to article on incorporations."

The amendments of the committee on revision were then severally concurred in.

The articles on boundaries, education and school funds, and banks and banking were then referred to the committee on revision and arrangement.

The convention then resolved itself into committee of the whole for the further consideration of No. 15 [21?], article on schedule, Mr. Kinne in the

chair. And after some time spent therein the committee rose and by their chairman reported progress thereon and asked leave to sit again. Leave was granted.

Mr. Kinne moved that the convention adjourn, which was disagreed to. Mr. Chase moved that the convention adjourn, until ten o'clock tomorrow morning, which was agreed to.

FRIDAY, JANUARY 28, 1848

Prayer by the Rev. Mr. Read.

The journal of yesterday was read and corrected.

Mr. Wheeler presented a petition from sundry inhabitants of Dane County, requiring the old constitution again to be submitted to the votes of the people. Mr. Larrabee moved that the petition be laid upon the table, which was agreed to.

Mr. Dunn, from the committee on revision and arrangement, made the following report, to wit:

"The committee on revision and arrangement respectfully report the articles on incorporations and on amendments, with corrections and suggestions, in which they ask the concurrence of the convention.

AMENDMENTS

"Section 2. Alter so as to read, 'If at any time a majority of the senate and assembly shall deem it necessary to call a convention to revise or change this constitution, they shall recommend to the electors to vote for or against a convention at the next election for members of the legislature. And if it shall appear that a majority of the electors voting thereon have voted for a convention, the legislature shall at its next session provide for calling such convention.'

"First section, in thirteenth and fourteenth lines, strike out the words 'qualified to vote for members of the legislature.'"

INCORPORATIONS

"Section 1. Sixth line, substitute 'enacted' for 'coming.'"

Mr. Fowler, from the committee on incidental expenses, made the following report, to wit:

"The committee on incidental expenses, to whom was referred the communication of J. G. Knapp, superintendent of territorial property, report that Mr. Knapp presented to the committee the following bills paid as per vouchers, to wit:

Hale and Chapman's bill for stationery	$391.80
Hale and Chapman's bill for stationery	198.25
Hale and Chapman's bill for envelope paper	12.25
J. C. Fairchild's bill of lamp	3.50
Ludington and King's bill of locks, oil, candles, etc.	111.01
T. J. Blair's bill of lamp chimneys	8.25
Hathaway and Hurd's bill of spittoons	24.50
Abner Kirby's bill of knives	107.25
Abel Dunning's bill of freight	4.88
Dean and Co.'s bill of oil, candlesticks, pails, and cups	23.00
	$884.69

Exclusive of a bill for his own services and expenses going to Milwaukee to make his purchases, for which he charges 54.50

Making the total sum disbursed by him $939.19
To which he has received an appropriation made by the legislature of $690.00
Also an appropriation made by the convention to pay incidental expenses of $220.00

Making the total amount received by him $910.00

"The settlement of which the committee prefer leaving to the legislature, as he will have to account to them for all money received by him as such superintendent, and recommend the adoption of the following resolution: '*Resolved*, That the secretary of this convention furnish each branch of the legislature with a copy of this report.'

A. FOWLER,
Chairman."

Resolutions were introduced and read as follows, to wit:

By Mr. Beall: "WHEREAS, A large portion of our fellow citizens, the Germans and Norwegians, cannot be benefited by the provisions made for the publication of the forthcoming constitution—the circulation of papers in their language not exceeding 1,500 copies; and WHEREAS, It is desirable and due to so large a portion of our population that the fundamental law of our new state should be laid before them in their own language, so as to enable them to vote understandingly; therefore, *Resolved*, That the publisher of the *Wisconsin Banner* (Mr. Schœffler) is hereby authorized to translate said constitution into the German language and distribute 6,000 extra copies of his paper containing the constitution, in such a manner among the Germans as may be deemed most expedient and proper.

"*Resolved*, That the publisher of the *Nordlyset* (J. D. Reymert Esq.) is hereby authorized and requested to translate the constitution into the Norwegian language and to distribute 4,000 extra copies of his paper among the Norwegian residents in such manner as may be deemed expedient.

"*Resolved*, That the president of this convention shall contract with those publishers and issue his certificate to them; and the treasurer of the territory is authorized to pay the amount of the same as a part of the incidental expenses of the convention."

By Mr. King: "*Resolved*, That the committee on revision be instructed so to alter the resolutions relative to the public lands as to strike out, in the seventh and eighth lines, first resolution, the words 'the proceeds of so much thereof as shall have been sold by the territory of Wisconsin,' and insert 'remaining unsold'; and so to amend the second resolution as to provide that in case the odd-numbered sections shall be granted to the state as part of the school fund, such lands shall be sold in the same manner as the school lands."

Mr. King moved that the fifth rule be suspended for the consideration of the last named resolution now, which was agreed to.

Mr. King moved to amend the instructions by striking out in the third resolution, second line, the word "aforesaid" and inserting "above requested."

Also, in fourth resolution, sixteenth line, by striking out the words "in that behalf."

Mr. Whiton made some remarks.

Mr. Prentiss thought the same rule did not apply to the canal lands and the school lands. The canal lands lay together in a body and were heavily timbered. If the odd sections were not made subject to the right of preëmption, the effect would be to prevent their improvement and retard the growth of the country. The settlers on these lands would not be satisfied with the amendment proposed by the resolution. The first branch of the instructions seemed to him very proper.

Mr. Whiton thought the settlement of the country would be equally retarded by the remainder of the five hundred thousand acres of land appropriated to public schools, and to which the principles of preëmption did not apply. He could see no propriety in making a distinction in favor of the canal lands. Mr. Vanderpoel concurred in the views of Mr. Whiton. He thought that, having provided for the protection of the interests of the present settlers on the canal lands, they had gone as far as they should go. He wished to see the school fund augmented and the lands sold at the best rates.

The motion was disagreed to. And a division having been called for, there were 17 in the affirmative, negatives not counted.

Mr. Castleman moved to lay the resolution on the table, which was disagreed to. And a division having been called for, there were 20 in the affirmative and 30 in the negative.

Mr. Estabrook said that if he understood the object of the resolution he was in favor of it so far as the first branch of the instructions was concerned. As regarded the other, he cared but little. He thought the portion of the land which had been sold should not form any portion of the school fund. It was very desirable to obtain from Congress an appropriation to defray the expenses of this convention and the previous one. All these expenses had been paid out of the canal fund. The mode most likely to be successful of obtaining such an appropriation would be to ask not to have the land which had been sold considered as a portion of the five hundred thousand acres.

Mr. Vanderpoel thought that if the resolution did not go so far as to protect the interests of those who already occupied the odd

sections, it should do so. The actual settlers should be protected, and unless the resolution was put in such a shape as to provide for that, he could not vote for it.

Mr. Castleman moved to amend the instructions by adding: *"Provided,* That all persons who are now or may be settled on any of the said odd sections at the time of the adoption of this constitution shall be entitled to preëmption as on lands belonging to the general government," which was agreed to. The question was then put upon the adoption of the resolution as amended, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 61, negative 1; for the vote see Appendix I, roll call 204].

Resolution No. 3, introduced by Mr. Carter yesterday, was taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

Resolution No. 2, introduced by Mr. Lewis yesterday, was taken up.

The morning hour having expired, Mr. Lewis moved that the rules be suspended, which was agreed to. The question was then put upon the adoption of the resolution, and was decided in the affirmative.

Mr. Fenton moved a reconsideration of the vote taken on the adoption of resolution No. 3, which was disagreed to. And a division having been called for, there were 22 in the affirmative and 26 in the negative.

Mr. O'Connor by leave introduced the following resolution, which was read, to wit: *"Resolved,* That this convention adjourn sine die on Saturday, the twenty-ninth instant, at six o'clock P.M."

The report of the committee on revision and arrangement was taken up, and the amendments of the committee to articles incorporations and amendments were severally concurred in.

The convention then resolved itself into committee of the whole for the consideration of No. 15, article on miscellaneous provisions; No. 22, article on districting representatives; No. 23, section on the executive [Sec. 23 of No. 1, article on executive], Mr. King in the chair.

On motion of Mr. Dunn the committee took up the section proposed to be added to the article executive, authorizing the governor at any time to convene the legislature when the public interest should demand it and to change the place of its sessions in case of danger from invasion or the prevalence of contagious disease. The committee agreed to the section without amendment.

The article on miscellaneous provisions having been agreed to,

The committee then rose and by their chairman reported back No. 15, article on miscellaneous provisions, and No. 22, article on districting representatives, with amendments; and No. 23, section —, on executive [Sec. 23 of No. 1, on executive], without amendment.

The question was then put upon ordering section —, on the executive, to be engrossed and read the third time, and was decided in the affirmative.

The question being on concurring in the amendments of the committee to No. 15, article on miscellaneous provisions, Mr. Jackson called for a division of the question.

The first, second, and third amendments, which were: "First. Strike out the word 'day' and insert the word 'Monday.'

"Second. Add to section 1, as follows: 'And the general election shall be holden on the Tuesday succeeding the first Monday in November in each year.'

"Third. Amend section 2 by inserting between the words 'disqualified' and 'from' the words 'as an elector and,' " were then severally concurred in.

The question was then put upon concurring in the fourth amendment, which was to add as an additional section the following: "Section —. All legal voters resident upon Indian territory within the state of Wisconsin shall under the restrictions prescribed by this constitution have the right to vote in the counties nearest their residence."

Mr. Kennedy moved to amend the amendment by adding the words "for state and United States officers," which was agreed to. The amendment as amended was then concurred in.

The fifth amendment, which was to amend section 3 by striking out the words "postmasters excepted," was then nonconcurred in. And a division having been called for, there were 23 in the affirmative and 26 in the negative.

The sixth, seventh, and eighth amendments, which were: "Sixth. Strike out section 4.

"Seventh. Strike out section 5.

"Eighth. Add as an additional section the following: 'Section —. The elective officers of the legislature, other than the presiding officers, shall be one chief clerk and a sergeant at arms by each house,' " were then severally concurred in.

The question was then put upon concurring in the ninth amendment, which was: "Section 29. No county shall be divided or have any part stricken therefrom without submitting the question to a vote of the people of the county; nor unless a majority of all the legal voters of the county voting on the question shall vote for the same.

"Section 30. No county seat shall be removed until the point to which it is proposed to be removed shall be fixed by law and a majority of the voters of the county voting on the question shall have voted in favor of its removal to such point."

Mr. Lovell was opposed to it. He thought it would be a very bad provision in the constitution and would work injury to individuals. It might happen that a strip of land would be put on to a county by the legislature before the county was much settled. Afterwards, those living in that strip might desire to be set off to the adjoining county; and it might be right that they should be. It might often happen, however, that a majority of the inhabitants of

the county would oppose their wishes through a reluctance to diminish the size of the county. There was as much pride of territory in counties as had been exhibited here in reference to the boundaries of the state or as might be seen in the discussion of such questions in Congress. It was wrong to put it in the power of a majority to place a minority in a place where they ought not to be. The same argument applied with equal force to the second amendment. County seats were places in which the whole county was interested and they ought not to be located in some obscure situation merely because it was central and because the people could not agree upon any other.

He proposed to examine a little into the history of this county seat business in the territory. In the county of Walworth there was a great difficulty in settling this matter. They had tried to adjust the matter by voting on it, but could not agree on any place where it ought to be. Finally they determined on quieting the difference by locating it in the center of the county, a spot in itself unsuitable as any they could have selected. When the county seat was first put there, it was a mere quagmire, though now things were in a better condition. A similar difficulty arose in the county of Washington. The matter was submitted to the people. They all voted differently and did not agree on any place, so that for some time there was no fixed organization of courts in the county. Finally, the last legislature was obliged to interfere and locate the county seat temporarily for five years until the people could agree where to place it.

This plan of submitting this question to the people never settled it right. It was only a species of arbitration and went on the principle of splitting the difference. This was not properly a constitutional provision, and the matter could with perfect safety be left to the legislature. It was true that the legislature would be besieged about this matter, but they would be at any rate. If anything, they would be more harassed under the proposed system than if it were left entirely to them. There would be a perpetual clamor for a submission to the people. It would be said every year that there had been a great change of public opinion in the county on the subject. It must be submitted again. And thus the people would be kept continually voting on the question, after once having decided it.

Mr. Richardson expressed himself in favor of the amendment. Mr. Vanderpoel was also in favor of the amendment. He could not agree with Mr. Lovell in his views. He thought the amendment would tend to prevent constant legislation and to suppress local jealousies on the question of sending members to the legislature. He knew of many cases where the fear of having counties divided or cut up had prevented the voters in them from sending their best men to the legislature.

And pending the question, on motion of Mr. Chase the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

The pending question being on concurring in the ninth amendment of the committee to No. 15, article on miscellaneous provisions,

Mr. Larrabee said he had stated his reasons when in committee why he was in favor of leaving to the people of the several counties the question of their division. The principal one was that these questions gave great trouble to the legislature, the great body of whom never could have any adequate knowledge of their real merits; and in nine cases out of ten the division and location of the county seats were made in accordance with the wishes of certain interested individuals and not in accordance with those of the great body of the people. He thought it should be left to a fair vote of the people. They were best acquainted with the circumstances and necessities of the case, and they were the ones interested. The creation of a great number of small counties, as it had usually been done, was a great evil. They were cut up by the arts of politicians and speculators to promote their political advancement or to secure county seats in places in which they were interested. He had known instances of this kind. The people of the county were the ones in whose hands these things should be placed. They had to build the courthouses and jails and pay all the expenses of county government; and these burdens ought not to be doubled against their will by the intrigues of politicians. He therefore hoped the amendment he had offered would be adopted.

The question was then put and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 44, negative 10; for the vote see Appendix I, roll call 205].

Mr. Chase moved to amend the article by adding the following as an additional section, viz.: "The legislature shall provide by law for the exemption from forced sale of a limited amount of land, the same being the homestead of any family, when the same shall not exceed in value a sum to be fixed by such law, and may make such other exemptions as they deem expedient."

Mr. Chase said he offered this amendment simply to get a fair test of the ayes and noes on the general subject of homestead exemption. He had not been able to do this yesterday, owing to the multiplicity of propositions and the peculiarities which might have influenced the votes upon each. He now called for the ayes and noes.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 20, negative 37; for the vote see Appendix I, roll call 206].

Mr. Harvey moved to amend the article by adding as an additional section the following, to wit: "Section —. The right of the laborer to payment for his labor shall be recognized by the passage of wholesome lien laws, conveying rights as equally as practicable to every class of laborers to a lien upon any species of property upon which their beneficial industry shall have been bestowed." And the question having been put, it was decided in the negative.

Mr. Judd moved to amend the article by adding as an additional section the following, to wit: "Section —. The rents, issues, and profits of the real estate of any married woman and the interest of her husband in her right in real estate which belonged to her before her marriage or which she may have acquired by device or inheritance during coverture and all personal property belonging to any married woman at the time of her marriage shall be and remain her separate property and shall during coverture be exempt from attachment or levy of execution for the debts of her said husband. And no conveyance of such real estate made during coverture by such husband of such rents, issues, and profits, or of any interest in such real estate shall be valid, unless the same be by deed executed by the wife jointly with her husband and acknowledged by him in such manner as a deed of conveyance to real estate is required to be acknowledged. When a married woman has a separate property at the time of marriage such property shall be liable for her debts contracted before marriage. Laws shall be passed providing for the registry of a married woman's separate property and more clearly defining her rights thereto."

Mr. Judd spoke in favor of this amendment.

Mr. Vanderpoel said he was astonished to see the gentleman from Dodge offering and supporting such a proposition. But a few minutes ago he had voted against a provision for the exemption of a man's homestead: now he offered a proposition for the exemption of the property of women. Mr. Vanderpoel said he thought this was inconsistent and unjust. He would not vote for thus transferring the breeches.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 5, negative 56; for the vote see Appendix I, roll call 207].

Mr. Estabrook, from the committee on education and school funds, made the following report, to wit:

"The committee on education and school funds, to whom was referred the resolution of the convention directing said committee to inquire into the expediency of providing a coat of arms for the state, beg leave to report that they have duly considered the subject so referred to them and submit to the convention the following resolution: 'It shall be the duty of the legislature to provide a great seal for the state, which shall be kept by the secretary of state; and all official acts of the governor, his approbation of the laws excepted, shall be thereby authenticated.' "

Mr. Estabrook moved that the resolution be adopted and added as an additional section to the article under consideration. Mr. Larrabee moved to amend the resolution by striking out the word "great" before "seal," which was disagreed to. The resolution was then adopted.

Mr. Chase moved to amend the article by adding as an additional section the following, viz.: "The legislature shall provide such alteration in the common law as will abolish the practice of taking life as a penalty for crime." And the question having been put, it was decided in the negative.

The question being upon concurring in the amendments of the committee of the whole to No. 21, schedule, which were: "First. Amend the fourth section by inserting after the word 'state' in the fifteenth line the following words, to wit: 'and all offenses committed against the laws of the territory of Wisconsin, before the change from a territorial to a state government, and which shall not be prosecuted before said change, may be prosecuted in the name and by the authority of the state of Wisconsin with like effect as though the said change had not taken place.'

"Second. Strike out in section 10 the words 'except for judges of the supreme court and circuit judges' in the second and third lines of the twelfth section; also, all after the word 'mentioned' in the eighth line of the printed bill, in section 12.

"Third. Amend section 12 by inserting the following after the word 'territory' in the second line, to wit: '*Provided*, That no elector shall be entitled to vote except in the town, ward, or precinct where he resides.'

"Fourth. Substitute the following for section 14: 'Section 14. The senators first elected in the even numbered districts, the governor, lieutenant governor, and other state officers first elected under the constitution, shall enter upon the duties of their respective offices on the first Monday of June next, and shall continue in office for one year from the first Monday of January next. The senators first elected in the odd-numbered senate districts, and the members of the assembly, first elected, shall enter upon their duties respectively on the said first Monday of June next, and shall continue in office until the said first Monday of January next,' " they were then concurred in.

Mr. Lovell moved that the article be laid on the table, which was agreed to.

No. 22, article on districting representatives, was then taken up. And the question being on concurring in the amendments of the committee of the whole, which were: "Amend as to the county of Racine:

First. The towns of Burlington, Wheatland, and Salem in the county of Racine shall constitute an election district and shall be entitled to elect one member of assembly.

The towns of Brighton, Bristol, Paris, and Pike in the county of Racine shall constitute an election district and shall be entitled to elect one member of assembly.

The towns of Southport and Pleasant Prairie in the county of Racine shall constitute an election district and shall be entitled to elect one member of assembly.

The towns of Racine and Mount Pleasant in the county of Racine shall constitute an election district and shall be entitled to elect one member of assembly.

The towns of Rochester, Norway, Yorkville, Raymond, and Caledonia in the county of Racine shall constitute an election district and shall be entitled to elect one member of assembly.

Second. The towns of Burlington, Wheatland, Salem, Brighton, Bristol, Paris, Pike, Southport, and Pleasant Prairie in the county of Racine shall constitute the sixteenth senate district and shall elect one senator.

The towns of Racine, Mount Pleasant, Rochester, Norway, Yorkville, Raymond, and Caledonia in the county of Racine shall constitute The seventeenth senate district and shall elect one senator," Mr. Sanders called for a division of the question.

The question was then put, first upon the amendment of the committee relative to the senate district. Mr. Reymert moved to amend the amendments as follows: "Strike out all that refers to senatorial districts in the county of Racine, and insert:

'The towns of Southport, Pleasant Prairie, Pike, Mount Pleasant, Caledonia, Racine, and Raymond shall constitute the sixteenth senate district, and shall elect one senator.

The towns of Wheatland, Burlington, Rochester, Salem, Brighton, Yorkville, Norway, Paris, and Bristol shall constitute the seventeenth senate district and shall elect one senator.'"

And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 33, negative 27; for the vote see Appendix I, roll call 208].

The question was then put upon concurring in the amendment as amended, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 30, negative 27; for the vote see Appendix I, roll call 209].

Mr. McClellan moved a reconsideration of the vote just taken. And the question having been put, it was decided in the negative. And a division having been called for, there were 17 in the affirmative and 22 ["32" in MS] in the negative.

Mr. Jackson moved that the article be recommitted to committee No. 2, with instructions to report the same as it was originally reported by the committee, which was agreed to. And a division having been called for, there were 31 in the affirmative and 16 in the negative.

Mr. Dunn, from the committee on revision and arrangement, made the following report, to wit:

"The committee on the judiciary, who were instructed 'to inquire into the expediency of providing for uniformity in deeds for the conveyance of real estate,' respectfully report that in their opinion it is inexpedient and unnecessary to provide for the object of the resolution by any article in the constitution. The legislature has such power over the subject as it may be policy to exercise at any time."

Mr. King moved that the rules be suspended for the consideration of the resolutions now, which was agreed to.

The report and resolution of the select committee, relative to the expenses of the contested seat of the Hon. John O'Connor, were then taken up.

Mr. Dunn moved to amend the report by transferring from the account of William S. Hamilton to that of John O'Connor the sum of $9.80, which was agreed to. And the question being upon the adoption of the resolution, Mr. Fox called for a division of the question.

The question was first put upon the adoption of that portion of the resolution paying to William S. Hamilton the sum of $14.87, and was decided in the negative. The question was then put upon the other portion of the resolution, and was decided in the affirmative.

Mr. Richardson by leave reported as correctly engrossed section —, on the executive. The question was then put upon the passage of the section, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 60; for the vote see Appendix I, roll call 210].

Mr. Richardson moved that the convention adjourn, which was disagreed to.

Mr. Lovell, from the committee on executive, legislative, and administrative provisions, reported No. 22, article on districting representatives, as originally reported in accordance with the instructions of the convention.

Mr. Rountree moved to amend the article as follows, to wit: "In case the county of Grant shall be entitled to five members of assembly, then the districts shall be as follows: 'Strike out all that relates to assembly districts in Grant County and insert:

> The precincts of Hazel Green, Fair Play, Jamestown, and Smelser's Grove in the county of Grant shall constitute an assembly district and shall elect one member of assembly.
>
> The precincts of Platteville and Head of Platte in the county of Grant shall constitute an assembly district and shall elect one member

of assembly.

The precincts of Centerville, Muscoda, Fennimore, Lancaster, Hurricane, and New Lisbon in the county of Grant shall constitute an assembly district and shall elect one member of assembly.

The precincts of Potosi, Pleasant Valley, and Waterloo in the county of Grant shall constitute an assembly district and shall elect one member of assembly.

The precincts of Beetown, Cassville, Patch Grove, and Millville in the county of Grant shall constitute an assembly district and shall elect one member of assembly.' "

Mr. Richardson: I wish to make a few remarks before the vote is taken. It appears from the returns of the census last taken in Grant that she is entitled to one more member of assembly than has been apportioned to her. And as to the correctness of the census returns from Grant as made unofficially, I will appeal to the honorable gentleman from Lafayette (Judge Dunn), who is well acquainted with the gentleman authorized to take said census, if he feels at liberty to state to this convention, whether, in his opinion, the county of Grant contains the number of inhabitants set down by said returns. I believe the county of Waukesha is in the same condition as Grant. That is, she is not fully represented in our apportionment of representatives, and I now appeal to all gentlemen of this convention whether they are not willing to do an act of strict and simple justice to these two counties.

And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 27, negative 32; for the vote see Appendix I, roll call 211].

Mr. Chase moved to amend the article by adding the following: "*Provided*, That any towns hereafter organized may be added by the legislature to either of the adjoining districts." And the question having been put, it was decided in the affirmative.

Mr. Foot moved to amend the article by adding as follows: "*Provided*, That should the legislature at its next session, to be held on the first Monday in February next, or at any time thereafter, alter the boundaries or divide the town of Center, they may attach such portion of it to the district lying north of it as they may deem expedient." And the question having been put, it was decided in the affirmative.

Mr. Nichols moved to amend the article "so that the town of Oregon shall be added to the assembly district in which Madison is included." And the question having been put, it was decided in the affirmative.

Mr. A. G. Cole moved to amend the article as follows, to wit: "Amend

the report in reference to the county of Racine as follows: 'The towns of Burlington, Wheatland, Salem, Brighton, Bristol, Paris, Pike, Southport, and Pleasant Prairie in the county of Racine shall constitute the sixteenth senate district and shall elect one senator.

" 'The towns of Racine, Mount Pleasant, Rochester, Norway, Yorkville, Raymond, and Caledonia in the county of Racine shall constitute the seventeenth ["seventh" in MS] senate district and shall elect one senator.' "

And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 4, negative 53; for the vote see Appendix I, roll call 212].

Mr. Jackson moved to amend the article as follows, viz.: "Strike out all that part which relates to districts in the county of Rock, and insert:

> The towns of Beloit, Newark, and Avon in the county of Rock shall constitute an assembly district and shall elect one member of assembly.
>
> [The towns of Turtle, Clinton, Bradford, and Johnstown in the county of Rock shall constitute an assembly district and shall elect one member of assembly.]
>
> The towns of Lima, Milton, Fulton, and Porter in the county of Rock shall constitute an election district and shall elect one member of assembly.
>
> The towns of Union, Magnolia, Spring Valley, and Center in the county of Rock shall constitute an assembly district and shall elect one member of assembly.
>
> The towns of Janesville and Rock in the county of Rock shall constitute an assembly district, and shall elect one member of assembly."

And the question having been put upon the adoption of the same, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 8, negative 52; for the vote see Appendix I, roll call 213].

Mr. Latham moved that the article be laid upon the table, which was agreed to. And a division having been called for, there were 25 in the affirmative and 19 in the negative.

Mr. Fitzgerald moved that the convention adjourn, which was disagreed to. And a division having been called for, there were 21 in the affirmative and 28 in the negative.

Mr. Larrabee by leave introduced the following resolution, to wit: "*Resolved*, That the following sections be a part of the constitution: 'Section —. All county officers whose election or appointment is not provided for by this constitution shall be elected by the electors of the respective counties or appointed by the boards of supervisors or other county authorities as the legislature shall direct. All city, town, and village officers whose election or appointment is not provided for by this constitution shall be elected by the electors of such cities, towns, and villages, or of some division thereof, or appointed by such authorities thereof, as the legislature shall designate for that purpose. All other officers whose election or appointment is not provided for

by this constitution and all officers whose offices may hereafter be created by law shall be elected by the people or appointed as the legislature may direct.'

" 'Section —. The legislature may declare the cases in which any office shall be deemed vacant, where no provision is made for that purpose in this constitution.' "

Mr. Larrabee moved that the rules be suspended for the consideration of said resolution now, which was agreed to. The resolution was read the first and second times. The question was then put upon ordering the resolution to be engrossed and read the third time, and was decided in the affirmative.

No. 22 [21?], article on schedule, was then taken up. Mr. Rountree moved to amend the same by striking out in section 11, in third line, "Jefferson, Rock, and Green" and inserting "Washington, Sheboygan, Manitowoc, Calumet, Brown, and Fond du Lac"; by striking out in fourth and fifth lines "Washington, Sheboygan, Manitowoc, Calumet, Brown, and Fond du Lac" and inserting "Jefferson, Rock, and Green."

Mr. Rountree: Mr. President—I propose this amendment to the article now under consideration, believing, as I do, that the public good requires the division of the state into congressional districts by a north and south line, as near as may be. I propose by this amendment to comprise the counties of Racine, Walworth, Milwaukee, Waukesha, Washington, Sheboygan, Manitowoc, Brown, Calumet, and Fond du Lac in one congressional district and that the balance of the state shall comprise the other district. By this division the number of inhabitants is about equally divided, though the western district by this division will comprise much the larger portion of territory, which evil I think we shall have to submit to. I suppose it to be our duty in this case, as in all others which may arise, and upon which we are required to act, faithfully to discharge our duty to the people who sent us here; and entertaining this opinion, I do not see that gentlemen can differ with me in the plan I propose in this amendment.

I object to the division and districts as proposed in the article presented by the select committee upon that subject because it is unequal, partial, and unjust. And whether it is the product of accident or design, it is equally inexcusable and improper. Sir, I invite you and all the members of this convention to cast your eyes to the map of this state, which hangs near you upon the wall of this hall. There, sir, you will see that this article, as reported, proposes to form one congressional district out of seven small counties in the southeast corner of this state. Small, I mean, in territory, but large in population. Those counties are Milwaukee, Waukesha, Jefferson, Racine, Walworth, Rock, and Green. Those counties do not

lie in a square, nor are they united by common interests. These seven counties contain, as shown by the late census, a little less than one-half the population of the state; and by the map there, sir, it appears also that they comprise less than one-tenth part of the territory of this state; and the fact also appears that this said favored district contains but about one-third part of the established counties in the territory. This little favored district in the southeast corner of the state comprises some sixty miles of lake coast, with harbors partly improved, a well-settled and dense population, though, as I before stated, in no wise united by common or peculiar interests. Yet these particular counties must form one congressional district, while this liberal and public-spirited committee assigns to the other district some nineteen or twenty counties, extending over nine-tenths of the territory, containing a little the larger population, covering more than six hundred miles of lake coast, unimproved by harbors, covering the whole length of the Mississippi from the falls of St. Anthony down to the state line—a distance of some four or five hundred miles—and extending from the extreme northeastern corner of the state to the extreme southwestern—a distance of more than five hundred miles—and almost surrounding the little, compact seven-county district.

Now, sir, I would ask if this division is a fair and equitable one. Will the people of this territory approve such a division? I think not. I know, sir, that the people of the western portion of the territory do not wish or expect such a division of the state. And I here call upon western Democrats in this convention to come out and support my amendment, thereby supporting such a division as will be just and proper. I call upon all western and untrammeled and unprejudiced members to come up to their duty and prevent this gross injustice being perpetrated. I strongly suspect, sir, that this matter has been all arranged and settled, and we are doomed and compelled to suffer this gross injustice. I suspect it, sir, for the reason that during all the stages through which this article has passed in this convention—and this being the very last moment when an amendment to it would be in order—no member of the Democratic party in the majority upon this floor has so much as offered an amendment to this section of the article; whilst I know, too, that the provisions of the amendment I now propose are dear to a large portion of that party at home in the western portion of the territory as well as to the people generally. I ask, sir, how

western Democrats can reconcile the passage of this article without my amendment to their constituents without having it, at least, to say in their excuse, that they proposed to amend it and supported proper amendments. But, sir, if this question has been arranged and settled and the strong party screws have been applied so effectually as to prevent any inroads upon this most unjustifiable act, I must—and those who think with me must—submit. But while I do submit to this act of the party in the majority of this convention, I will herald my protest long and loud and hope it may reach every portion of the territory.

If the grand design to be accomplished by passing this article without my amendment is to ensure both the congressional districts to be Democratic, I think, sir, that this great injustice need not have been perpetrated to accomplish that object. For proof of my statement I will refer you to the delegation from a majority of the counties in either district upon this floor and to the recent elections held in the territory. And I will further say that you may take any four counties lying adjoining to each other, of the large class of counties in this territory, and unite them, and take the aggregate vote at any recent election held, and you will find it to be Democratic. This being the case, and each of the districts properly formed presenting a Democratic majority in the recent elections, what have you to fear on that score? I will suggest a probable fear which might be entertained, and that is that the western district would not present so heavy and decided a party majority as it would if the county of Washington and the other northeastern counties were embraced in the district; but, sir, I will ask honorable members, placed upon this floor to make a constitution for the good people of Wisconsin and not placed here to form Democratic districts, if such considerations are to find a lodgment in their thoughts and govern their acts upon this question. I think there was much force in the remarks made by the honorable gentleman from Lafayette a few days ago upon the subject of districting the state into representative districts. That gentleman then said that sparsely settled counties with few inhabitants and large territory should be properly regarded by the convention; that population should not in such cases be alone regarded; that territory should also be regarded in making the apportionment. And I was glad to see that rule adopted by the convention. I now ask gentlemen to

permit the same rule to govern in the vote they are about to cast upon my amendment.

I have before stated that the division as made by the committee assigned about nine-tenths of the territory and a little more than half the population to one district—and that would certainly make it a very Democratic district—and the balance, seven small counties, to the other district. If the argument of the honorable member from Lafayette was good—and I believe the convention thought it was—in the case of representation in counties, it is equally good in forming districts and representation in Congress; and I call upon that gentleman with all others who entertain the same views to support this amendment. I wish gentlemen to come out upon this question. I shall call, before I take my seat, for the ayes and noes. I want this vote recorded, so that gentlemen may show their hands and refer their constituents to the journal of this convention to show how they voted upon the question of districting the state, when complaints may be made by the people that their representative in Congress has too large a district to represent and that he cannot from the circumstances of the case understand their wants and wishes. I think, Mr. President, that I shall not prove to be mistaken in the result of the vote that is about to be taken upon my amendment. I think, sir, that the profound silence that gentlemen belonging to the party in the majority in this convention have observed upon this subject cannot be misunderstood.

They shall, however, take the responsibility of rejecting it by a direct vote; they have the numbers and the power to do so, and upon them I throw the responsibility of doing it; and let it not be said hereafter, when the people shall rise in their majesty and condemn this provision in the constitution, that the subject escaped the notice of members and was engrafted unawares into the constitution. I do not mean to be understood as saying that I think this will be a sufficient cause for the people to reject the constitution or even to vote against it. No, sir, such is not my opinion. This instrument contains too many good provisions, in my judgment, and I hope it may be adopted. But, sir, I do say that, in my opinion, the very first opportunity that the people may have, they will correct this evil, and we shall look forward to the apportionment which is to be made under the United States census to be taken in 1850, with deep interest, for the correction of this great wrong.

Mr. Chase said he had not known till the gentleman from Grant informed him that members of Congress were intended to represent territory and not people. In the city of New York and other large cities they represented no territory at all. In the sparsely settled parts of the West the districts were almost of unlimited size. The gentleman ought to know that they are apportioned according to population wholly. Now though the two districts as proposed were very unequal in extent of territory, he did not doubt that the northern and western one, large as it was, contained great men enough to represent it adequately. He was well satisfied with the provision reported by the committee. He thought it was the true policy to district the state by a line running east and west, and that both representatives should have districts bordering on the lake, and thus be interested in commerce. This was the great interest of the state, which depended on the action of the general government, and this needed the special interest of our representatives. It had been found impracticable, however, so to divide the districts as to have both border on the lakes and extend back to the Mississippi. This was done as nearly as possible, and he thought it could not be improved.

Mr. Prentiss said that if the proposition of the gentleman from Grant were adopted, one of the districts would contain over 4,000 more people than the other. The difference between the districts as recommended by the committee was only 189.

Mr. O. Cole said he believed this proposed arrangement of the committee gave universal dissatisfaction in the west. The people there had always desired a division by a north and south line; and the Democratic party at the last election had instructed their candidates to go for such a division. They deemed this to be just and proper. Their interests and feelings were different from those of the eastern portion of the territory, and a representation from one could not represent the other.

Mr. Rountree said that the difference in population in the districts according to his proposition was explained by the fact that the first census of Grant County had given her over 3,000 less population than she had been subsequently found to contain. Taking her corrected census, the difference would be but little over 400. But the west asked nothing on the score of sparse population. They asked only that an equitable division of the state might be made—one which should more nearly equalize the territory, as well as the

population. There was no propriety in putting all the thickly settled part into one district and all the sparsely settled part into the other. The gentleman from Fond du Lac had said that both the districts should border on the lake so that both representatives might feel a special interest in commerce. He would like to know if the Mississippi country had no rights—if the interests of the lake shore only were to be consulted. But it was apparent to him that political considerations were the ones principally regarded in this proposed division. Gentlemen wanted to divide so as to secure two Democratic districts at all hazards. He would not argue the question further. They had the power, and could sacrifice the rights of the west if they chose, but they would be held accountable.

Mr. Judd spoke.

The question was then put upon the adoption of the same, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 23, negative 37; for the vote see Appendix I, roll call 214].

On [motion] of Mr. Reymert the convention adjourned.

SATURDAY, JANUARY 29, 1848

Prayer by the Rev. Mr. Penman.

The reading of the journal of yesterday was dispensed with.

The President presented a petition from citizens of Dodge County, praying for the submission of the old constitution again to the votes of the people.

Mr. Vanderpoel moved that the same be laid upon the table, which was agreed to.

Mr. Larrabee presented a petition from citizens of Dodge County on the same subject, which was on his motion laid upon the table.

Mr. Wheeler presented the account of Messrs. Tenney, Smith and Holt for printing, which on his motion was referred to the committee on incidental expenses.

Mr. A. G. Cole introduced the following resolution, to wit: "*Resolved*, That the following resolution passed by this convention on the twenty-eighth instant be and the same is hereby rescinded: '*Resolved*, That each member be allowed double the number of papers containing the printed constitution at the time of the adjournment that is now authorized weekly by the convention.' " And on his motion the fifth rule was suspended for the adoption of said resolution now. The question was then put upon the adoption of the resolution, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 31, negative 28; for the vote see Appendix I, roll call 215].

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 9, resolution relative to apportionment and election of officers. Mr. Lewis, from the committee on that subject, reported an address to be submitted to the people with the constitution.

Mr. Dunn, from the committee on revision and arrangement, made the following report, to wit:

"The committee on revision and arrangement, who were instructed to inquire into the expediency of amending the article legislative by adding thereto a section requiring the first legislature of the state to meet in joint ballot on the first Monday of the session and ballot for United States Senators, and if they fail to elect on that day they shall meet again on the succeeding Wednesday and ballot as above provided, until they shall elect such Senators, respectfully report that in view of the fourth section of the first article of the Constitution of the United States, the power of this convention to engraft the section contemplated in the instruction on the constitution is doubtful; that no power to enforce the provisions of such a section is or can be vested in any of the departments of the state government, is clear. Therefore, they deem it inexpedient to engraft such a section in the legislative article."

Resolutions were introduced as follows, to wit:

By Mr. Harrington: "*Resolved*, That Douglass Randall, doorkeeper to this convention, be paid only for the time which he served in person, and that

Abram Ogden be allowed and paid $2.50 per day for the time which he has and may serve this convention in the above office."

By Mr. Case: "*Resolved*, That each member of this convention is hereby requested to furnish the committee on incidental expenses with a list and the number of newspapers ordered by them respectively, under a resolution of the convention to furnish papers for distribution." And the rule having been first suspended in relation to the last resolution, it was adopted.

By Mr. Chase: "*Resolved*, That at the same time when the votes shall be taken for the adoption or rejection of this constitution, a separate ballot may be given by every person qualified to vote for the adoption of this constitution, on which ballot shall be written or printed, or partly written and partly printed, the words following, to wit: 'Homestead Exemption—yes,' 'Homestead Exemption—no,' which ballot shall be received and deposited in a separate box, and counted, certified to, and returned in the same manner and at the same time as the votes for and against the adoption of this constitution. If by the return of said votes there shall appear to be a majority with 'Homestead Exemption—yes,' then the legislature at its first session after the adoption of this constitution shall provide by law for the separate registry and exemption from forced sale for any debt or liability contracted after the passage of said law, of a limited amount of land and the improvements thereon, the same being the homestead of any family or inhabitant of this state, and for such other property as they shall deem expedient."

By Mr. Lovell: "*Resolved*, That a select committee of three members be appointed to audit the account of Messrs. Tenney, Smith and Holt, for printing and binding 500 copies of the journal of this convention, at the usual rates paid by the legislature for similar work, and certify the same to the auditor, who is hereby instructed to issue his warrant upon the treasurer therefor as a part of the expenses of this convention."

Mr. Lovell moved that the fifth rule be suspended for the further consideration of said resolution now, which was agreed to.

Mr. Lovell remarked that the convention would adjourn before the journals and debates were completed, and it would be necessary to appoint a committee who would be here to audit the account.

Mr. Beall moved to amend the resolution by inserting after the word "appointed" the words "by ballot." And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 44, negative 16; for the vote see Appendix I, roll call 216].

Mr. Sanders understood the resolution to make it obligatory on the committee to audit the account at the rates paid for printing by the legislature. Under this understanding he was bound to oppose the resolution. This matter of printing was coming thicker and faster upon the convention. When the resolution authorizing the printing of the journals and sketches of debates by the *Argus*

office was adopted, they were told that the work could be done by that establishment more quickly and cheaply than by any other; and that the members would have the journals to carry home with them and distribute among their constituents. He wished the question of compensation settled by an aye and no vote, and not smothered up and thrown under the table. He called upon Mr. King and Mr. Harvey, who were experienced in printing, to say whether the work could not be done at forty cents per thousand for composition, and forty cents per token for presswork, and money made at it at those rates.

The morning hour having expired, Mr. Kinne moved a suspension of the rules, which was agreed to.

Mr. Whiton moved to amend the resolution by striking out the words "at the usual rates paid by the legislature for similar work."

Mr. Lovell said he had put the resolution in the present form so as to place the rate directly before the convention. If the majority of the convention were not willing to allow such rates for the work as the printers could live by, the latter would rather put their work on the same footing with the incidental printing and charge the convention nothing for it. The usual price paid for such work by the legislature was well known to be sixty-five cents per thousand, and sixty-five cents per token for presswork. There had been no intention to smother the matter. The question was whether the convention was willing to pay the usual price or some other.

In order to perform the work ordered by the convention, the printers had been obliged to employ reporters, which would not have been necessary if they were only making reports for their paper. In some way they should be compensated for this extra expense, as the work was ordered by the convention. In offering the resolution, he had no other object than to place the matter before the convention. Some price ought to be fixed for the work which was not yet completed, and the committee would be obliged to sit after the adjournment of the convention.

Mr. Judd spoke.

Mr. Chase said that the committee of which he was a member had called on Mr. Tenney last evening, and had inquired of him in what way the printing of the journals should be settled, and suggested that the matter should be left to some competent person. He replied that the price was already fixed, and if that price was

not paid it would cost the state ten times as much. Receiving that reply, the committee left.

Mr. Sanders said that he was convinced that forty cents per thousand was a living price. It would be recollected that when this matter was previously before the convention, gentlemen had advocated the resolution authorizing the printing of the journal and sketches of debates on the score of justice to the printers, who had agreed to perform the incidental printing for one cent. Now this same establishment had the audacity and effrontery to come here and ask for pay for printing the daily slips. When they had made their bid at one cent, they came out with an editorial stating that they had "struck a lead." It was true enough that they had done so, that the lead was now being exhibited to the convention.

When this subject was before them on a previous occasion, he had called upon the convention to refer it to the committee on incidental expenses and have them go to the office of the *Argus* and ascertain the rates at which the work could be done. This was declined by the convention. He thought then and still thought that the object of the particular friends of that press was to smother up the matter. There was a long tail to this whole business, which it would take a long time to wind up.

Mr. Gale said that when this matter was up before, it would be recollected that he had offered an amendment fixing the price for the work at forty cents per thousand and twenty dollars for the index. He had shown this amendment to Mr. Tenney, who had said that he would be satisfied with those rates, but would prefer that the matter should be left to the legislature.

The question was then put and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 45, negative 15; for the vote see Appendix I, roll call 217].

Mr. Kinne moved that the blank be filled by inserting: "at the rate of fifty cents per thousand ems for composition, and fifty cents per token for presswork."

Mr. Larrabee wished to vote understandingly on the subject and to pay the printers a just price. When Mr. Gale had moved the amendment to which that gentleman had just referred, he had voted for it. He was convinced that if the matter was left open, just such a difficulty would arise. The principle of law in such cases

was to give what should be ascertained to be a just and fair compensation. The gentleman from Walworth (Mr. Gale) had stated that he was authorized to say that the printers would be satisfied with forty cents per thousand for composition, and the same for presswork. If this statement was made by authority, he would feel himself compelled to vote for giving that price. When Mr. Gale's amendment was offered, one of the proprietors of the *Argus* office was in the hall, occupying a reporter's desk. He had made no opposition to it and had, in fact, given a silent consent. If forty cents was not a fair price, he wished to be informed what was. He was not a practical printer himself and wished some members of the convention who were, to make a statement on this subject. When this matter was up before, they had been told that the same matter could be transferred from the daily slips to the journal. Yet both were charged. He could not vote for this double charge. He would call upon Mr. Gale to say whether the remarks which he had made were by the authority of the printers. Mr. Gale stated that he had submitted his amendment fixing the rates at forty cents to Mr. Tenney at the time, and that he had expressed himself satisfied with it, though at the same time he had said that he had rather have the matter left open to the legislature.

Mr. Harvey moved to amend the amendment by striking out the word "fifty" in the first and second lines and inserting the word "forty."

Mr. Jackson said that in all the discussion which had thus far taken place on the subject of printing he had not yet said a word. Gentlemen had stated that the convention in their action on this subject had voted blindly. Perhaps this might be so, but if gentlemen would examine the journal of this convention they would find that he had studied economy in all his votes. When the resolution was passed giving to all the clerks of the convention a per diem of $5.00, a motion was made to rescind it, and the gentleman from Dodge (Mr. Judd) was found moving to postpone all consideration of the motion. He was willing to give the clerks $5.00 a day and was at the same time willing to allow the printers to work night and day for a mere nothing. He only alluded to this matter to show that the gentleman from Dodge (Mr. Judd) was actuated by some other motive than economy in the course which he took on this matter. He knew from the first that the journal must be printed and that the idea of letting out the printing to the lowest bidder

was a mere farce. Why were certain gentlemen so anxious to adopt this principle at the present time? In the last convention the same proposition was made, and the gentleman from Dodge (Mr. Judd) opposed it. Why did he do so? Because the printing could then be given to another press. Now, when it could not be given to that press, he (Mr. Judd) was anxious to let it out to the lowest bidder. Any way to avoid giving it to the *Argus*.

Gentlemen all knew that sixty-five cents was the usual price which had been paid for such work. He had himself talked to the printers on this subject, and they had said that they would take whatever price the convention should see fit to give them, even if they lost money by it. They trusted to the magnanimity of the convention. He presumed that when Mr. Tenney made the statement which he was said to have made to Mr. Gale he had this meaning and no more.

Mr. Larrabee said he had no doubt that the gentleman from Racine (Mr. Jackson) thought he had struck some pretty hard blows at his colleague from Dodge. The gentleman might act according to his own conscience, but he ought not to impute wrong motives to other gentlemen.

Mr. Chase thought this amendment would not help the matter. He hoped that all gentlemen on this floor would treat this subject dispassionately and coolly and as a mere business transaction. He would vote for giving a reasonable compensation if he could find out what that was. He did not believe these gentlemen would ask an unreasonable compensation. If forty cents was a reasonable compensation, he would vote for that; if fifty cents, for that; if sixty-five cents, for that. The work had been ordered by the convention. They had employed persons to perform it without agreeing on any price and were bound to pay for it a reasonable compensation. Nothing could be gained by referring the matter back to the committee and having it returned to them again. He hoped they would have the opinion of some practical printers, who would tell them what would be a reasonable compensation.

Mr. Harvey said that in all the arguments which had been used in favor of this claim for printing it had been urged that the printers were at an extra expense of $5.00 per day for reporting. This extra expense was met by the charge for the papers. He would make a brief statement of facts in regard to this matter, not as a practical printer, but as one who had had charge of a printing office.

In this county solid matter could be printed for forty cents per thousand for composition, and the same for presswork, and a slight profit could be made—not sufficient, he acknowledged, to cover the loss arising from doing a large amount of work for nothing. But it was to be remembered that a large portion of the work done for the convention was what was technically called "fat" matter. If solid matter could be afforded at forty cents, this could be done for the same price and yield a handsome profit.

Mr. Lovell said that Mr. Judd had represented him as stating that if the printers could not get what they asked, they would take nothing. He had made no such statement, but had said that if the printers could not have a fair price allowed them they would prefer to take nothing. He was not himself able to say what would be a fair price, but it should be recollected that a higher rate should be allowed for printing done during the time of the session, where much of it was executed during the night and as connected with the reporting. He cared not whether this additional compensation was paid by an additional charge for composition and presswork or by a specific appropriation.

As regarded the course of the gentleman from Dodge (Mr. Judd) on this subject, it did not tally very consistently with his votes in the last convention. Mr. Lovell here pointed out from the journal of the last convention several instances wherein Mr. Judd had voted for giving the highest rates of compensation to Beriah Brown, their printer. The gentleman from Dodge had been remarkable for his economy on this matter of printing in this convention, because the boot was on the other leg. In looking over the journal of the last convention he observed that there were divers long reports made, to the printing of which objections had been raised on the score of expense. In every case that gentleman had voted for printing them. He also voted for printing twenty thousand copies of the constitution for distribution. Something had been said on this floor about "fat" work. If he understood what that meant, there were some precious specimens of it in the last journal. Yet, for all these the gentleman from Dodge had voted, and that, too, at the rate of sixty-five cents per thousand. Before that gentleman made any charges of inconsistency against other members of the convention, he should examine his own course and see whether it had been consistent through two conventions. If the members had any curiosity on this subject, they could look

into the journal of the last convention and satisfy themselves. He was in favor of paying a fair compensation for the work and did not believe that forty cents per thousand was a fair compensation. He did not think the convention would do justice to itself or to the printers if it should cut down the price below what was fair and reasonable.

Mr. Judd spoke.

Mr. Reed said that he had anticipated from the commencement of the session of the convention, when the printing question was first under consideration, that exactly this result would be brought about. He was satisfied when the plan was adopted of authorizing this printing without fixing a price, that they would meet with precisely this difficulty. He was aware that gentlemen who refused to pay a price which would be satisfactory and for which the work could be well done had an object in view. He was not disposed to put down the price of any man's labor. He had himself been connected with the craft as a practical printer. He did not believe in the propriety of letting out the printing to the lowest bidder. He believed that course would involve the convention in difficulty. He was sufficiently acquainted with the printing business to know that many means could be resorted to by which the convention might be deluded into giving larger prices than they had contemplated. He recollected a case where a certain individual succeeded in obtaining from the legislature precisely double the price to which he was entitled; and this would never have been known if he (Mr. Reed) had not been called upon to measure the work. The individual referred to received $2.50 per thousand for composition, and the same for presswork. He did not think the convention was bound to cut down the price of public printing to what it might be done for under circumstances of extraordinary competition. He was willing to give a fair price but not an extravagant one for the purpose of giving tone to public sentiment, particularly when that tone was in his opinion on the wrong side of the question.

Mr. Fowler said that he had just been informed by Mr. Beriah Brown that forty cents for composition and presswork was a price at which money could be made. Mr. Kinne said this statement of Beriah Brown's might perhaps have been of some service if it had been made at an earlier period. He was decidedly opposed to making this a question to get up a fog upon. Taking everything in view, he did not believe that if ordinary printing could be done at

forty cents, this, which had been done at extra charges and by working extra hours, could be done so cheap. A reasonable compensation ought to be allowed. If it was shown that printers had been paid too much heretofore, that was no reason why they should not be paid enough now. No one had said that this particular job could be executed for forty cents. He hoped gentlemen would not allow their votes on this subject to be governed by party feelings.

Mr. Harvey said that he had stated that this job could be done better for forty cents than other jobs which printers would be glad to get at that rate.

Mr. Beall spoke.

Mr. Lakin said that he was very much interested in this rich and splendid subject, which was more fruitful than any other which had been before the convention. They had begun with it and were likely to conclude with it. He could not but fancy himself in some justice's court, listening to the trial of some weighty cause of $50. He had looked on with more amusement than anger, and the line of Virgil had been forcibly brought to his mind: *"Tantaene animis coelestibus irae!"* Gentlemen were just getting well into the subject, and he trusted they would interest the convention with it some time longer.

Mr. Jackson said that the quotation of the gentleman from Grant, coupled with his allusion to a justice's court, reminded him of a story he had once heard of a man who had recently received the dignified appointment of constable. The first process which was put into the hands of the new officer was one requiring to arrest a man for larceny. The culprit perceiving the approach of the constable fled into a swamp, and the officer pursued him, but finding himself unable to seize him he went back to the justice's office, and gravely made his return on the writ: *"In swampo, et non comeatibus."*

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 28, negative 33; for the vote see Appendix I, roll call 218].

Mr. Beall moved to amend the amendment by striking out the word "fifty" and inserting the word "forty-three," which was accepted by Mr. Kinne as a modification of his motion.

Mr. Jackson moved to amend the amendment by striking out the word "forty-three" and inserting the word "forty-five."

And the question having been put, it was decided in the negative. And

the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 15, negative 47; for the vote see Appendix I, roll call 219].

Mr. Folts moved to amend the amendment by striking out the word ["forty-three" and inserting the word] "fifty." And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 25, negative 38; for the vote see Appendix I, roll call 220].

Mr. Lewis moved to amend the amendment by striking out the word "forty-three" and inserting the word "forty-seven," which was disagreed to. The question was then put upon the amendment as modified, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 36, negative 27; for the vote see Appendix I, roll call 221].

Mr. Gifford moved to amend the resolution by substituting therefor the following: "That this convention pay Tenney, Smith and Holt the same price that the last convention paid for similar work, and that a committee of three be appointed to inquire into the same." And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 11, negative 57; for the vote see Appendix I, roll call 222].

Mr. Larkin moved that the convention take a recess until half past two o'clock P.M., which was disagreed to.

The question was then put upon the adoption of the resolution as amended, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 40, negative 22; for the vote see Appendix I, roll call 223].

Mr. Dunn moved that the convention proceed to ballot for the committee under said resolution, which was agreed to. Messrs. Chase and Vanderpoel were appointed tellers.

Mr. Chase moved that [the person having] the highest number of votes should be chairman of the committee, which was agreed to. The ballot having been taken and counted, the tellers reported that the whole number of votes given was 63, of which Mr. Featherstonhaugh received 34; Mr. Lovell 31; Mr. Judd 30; Mr. Secor 26; Mr. Case 23; Mr. Wheeler 21; Mr. King 7; Mr. Fox 3; Mr. Chase 2; Mr. Reed 2; Mr. Sanders 2; Mr. Whiton 1; Mr. Harvey 1; and Blank 2. The President decided that Mr. Featherstonhaugh having received the highest number of votes cast, was duly elected chairman.

Mr. Chase moved that the convention take a recess until half past two o'clock P.M., which was agreed to.

HALF PAST TWO O'CLOCK P.M.

Mr. Richardson reported as correctly engrossed No. 15, article on miscellaneous provisions.

Mr. Latham by leave introduced the following resolution, to wit: *"Resolved,* That the sum of $200 be paid to Thomas McHugh, secretary, for preparing the journal for publication, distributing journals, and all other extra

services which have been or may be imposed upon him by this convention."

Mr. Rountree introduced the following resolution, to wit: "WHEREAS, The business of this convention has been nearly accomplished, and a few hours' time will be sufficient to perfect and finish all the unfinished business of the said convention; therefore *Resolved*, That the per diem pay of the members of this convention shall cease and determine on Monday, the thirty-first day of January instant, and the president and secretary of this convention are hereby directed to make out and sign certificates for the per diem of said members up to the thirty-first day of January, after which time per diem shall not be allowed or paid to any member of said convention."

Mr. Larrabee moved to amend the resolution by striking out "thirty-first day of January" and inserting "first day of February," which was agreed to. The resolution as amended was then adopted.

Mr. Dunn, from the committee on revision and arrangement, made the following report:

"The committee on revision and arrangement respectfully report the article on executive with the additional section ordered to be added by this convention made a part of section 4 of the original article; also, the resolution relative to public lands and lands in the Fox and Wisconsin River grants, with corrections and suggestions, in which they ask the concurrence of this convention."

RESOLUTION RELATIVE TO THE FOX AND WISCONSIN RIVER GRANT

"Strike out third resolution and title.

"Suggest that the resolutions stand as fifth and sixth of the resolutions relative to public lands.

"Title."

RESOLUTION RELATIVE TO PUBLIC LANDS

"Resolution 1. In eighth and ninth lines strike out 'the proceeds of so much thereof as shall have been sold by the territory of Wisconsin,' and insert 'remaining unsold.'

"Resolution 3. Strike out in third, fourth, and fifth lines the words 'at the minimum price and subject to the same rights of preëmption to occupants as the public lands of the United States are now sold,' and insert 'as other school lands.' Also insert '*Provided*, That the same rights of preëmption as are now granted by the laws of the United States shall be secured to persons who may be actually settled upon such lands at the time of the adoption of the constitution.'

"*Resolved*, That the committee on revision be instructed so to alter the resolutions relative to public lands as to strike out in the seventh and eighth lines, first resolution, the words 'the proceeds of so much thereof as shall have been sold by the territory of Wisconsin' and insert 'remaining unsold'; and so to amend the second resolution as to provide that in case the odd-numbered sections shall be granted to the state as part of the school fund, such lands shall be sold in the same manner as other school lands: *Provided*, That all persons who are now or may be settled on any of the said odd sections at the

time of the adoption of this constitution shall be entitled to preëmption as on lands belonging to the general government."

The amendments reported by the committee on revision were severally concurred in.

No. 9, resolution relative to election and appointment of officers, was then taken up and read the third time. The question was then put upon the passage of the resolution, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 54, negative 3; for the vote see Appendix I, roll call 224].

No. 15, article on miscellaneous provisions, was then taken up and read the third time, when Mr. Whiton moved that the article be referred to the committee on engrossment, which was agreed to.

No. 22, article on districting representatives, was then taken up.

Mr. Latham moved to amend the article by striking out all that portion which relates to the formation of assembly districts in the county of Walworth and inserting as follows:

> The towns of Troy, East Troy, and Spring Prairie in the county of Walworth shall constitute an assembly district and shall elect one member of assembly.
>
> The towns of Whitewater, Richmond, and La Grange in the county of Walworth shall constitute an assembly district and shall elect one member of assembly.
>
> The towns of Geneva, Hudson, and Bloomfield in the county of Walworth shall constitute an assembly district and shall elect one member of assembly.
>
> The towns of Darien, Sharon, Walworth, and Linn in the county of Walworth shall constitute an assembly district and shall elect one member of assembly.
>
> The towns of Delavan, Sugar Creek, Lafayette, and Elkhorn in the county of Walworth shall constitute an assembly district and shall elect one member of assembly.

Mr. Chase moved to amend the article by striking out the words "New Lisbon" and inserting the words "New Berlin," which was agreed to.

Mr. A. G. Cole moved to amend the article as follows: Amend as to the county of Racine:

> First. The towns of Burlington, Wheatland, and Salem in the county of Racine shall constitute an election district and shall be entitled to elect one member of assembly.
>
> The towns of Brighton, Bristol, Paris, and Pike in the county of Racine shall constitute an election district and shall be entitled to elect one member of assembly.
>
> The towns of Southport and Pleasant Prairie in the county of Racine shall constitute an election district and shall be entitled to elect one member of assembly.

The towns of Racine and Mount Pleasant in the county of Racine shall constitute an election district and shall be entitled to elect one member of assembly.

The towns of Rochester, Norway, Yorkville, Raymond, and Caledonia in the county of Racine shall constitute an election district and shall be entitled to elect one member of assembly.

Second. The towns of Burlington, Wheatland, Salem, Brighton, Bristol, Paris, Pike, Southport, and Pleasant Prairie in the county of Racine shall constitute the sixteenth senate district and shall elect one senator.

The towns of Racine, Mount Pleasant, Rochester, Norway, Yorkville, Raymond, and Caledonia in the county of Racine shall constitute the seventeenth ["seventh" in MS] senate district and shall elect one senator.

And the question having been put upon the adoption of the same, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 13, negative 31; for the vote see Appendix I, roll call 225].

Mr. Larrabee moved a reconsideration of the vote taken yesterday adopting the proviso of Mr. Chase to the article relative to adding towns hereafter to be organized to adjoining districts. And the question having been put, it was decided in the negative.

Mr. Biggs moved to amend the article by striking out the words as follows: "The precincts of Benton, Elk Grove, Belmont, Willow Springs, Prairie, and that part of Shullsburg precinct north of town one in the county of Lafayette shall constitute an assembly district and shall elect one member of assembly. The precincts of Wiota, Wayne, Gratiot, White Oak Springs, Fever River, and that part of Shullsburg precinct south of town two in the county of Lafayette shall constitute an assembly district and shall elect one member of assembly," and inserting: "The precincts of White Oak Springs, Fever River, Benton, Elk Grove, and Belmont shall constitute an assembly district and shall elect one member of assembly. The precincts of Shullsburg, Gratiot, Wayne, Wiota, Prairie, and Willow Springs shall constitute one assembly district and shall elect one member of assembly." And the question having been put, it was decided in the negative.

The question was then put upon ordering the article to be engrossed and read the third time, and was decided in the affirmative. Mr. Larkin moved that the rule requiring the article to be engrossed be suspended, which was agreed to. The article was then read the third time. And the question having been put upon the passage of the article, it was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 57, negative 10; for the vote see Appendix I, roll call 226].

[No. 21, schedule, was then taken up.] And the rules having been suspended, it was read by its title. The question was then put upon the passage of the article, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 45, negative 12; for the vote see Appendix I, roll call 227].

The resolution accompanying report No. 1, of the committee on incidental expenses, of January 28, was then taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

Resolution No. 2, introduced by Mr. Beall yesterday, was taken up. And the rule having been suspended for the consideration of said resolution, Mr. Gale moved to amend the resolution so that the editor of the *Volksfreund* be authorized to translate, publish, and distribute 5,000 extra copies.

Mr. Jackson said he knew but little of the *Volksfreund*. He had seen but one number of it, which he held in his hand. It contained a short article (which he begged leave to read) published in the English language, which was a severe stricture upon him for offering a proviso to the suffrage article requiring persons of foreign birth to complete their naturalization papers after a residence of six years or lose the privilege of the elective franchise. While the amendment proposed by Judge Dunn to the suffrage article was under consideration, much fear was entertained that that amendment or something similar might prevail. The proviso which he offered was written by Mr. Kilbourn, who added one year to the time specified. At the suggestion of Mr. Doran several members of that body, of foreign birth, saw it after it was written and approved of it as a compromise, and he did so himself. He alluded to Messrs. Fitzgerald, Fox, Fagan, Schoeffler, and others who had shown a deep interest here for their foreign brethren. Shortly after he offered it the convention adjourned without taking the question. He had intended to renew it the next morning, but after a consultation with the gentlemen before named, at their request he concluded not to do so. All these gentlemen would bear him witness that he had been liberal and fair towards the foreign population of the territory. The editor of this paper undoubtedly labored under a mistaken idea of the matter, and he did not attribute to him any intention of misrepresenting him. If it was thought best to have an extra number of the constitution printed in the German language, he would vote to give a proper share to the publisher of that paper.

The amendment was disagreed to. And a division having been called for, there were 15 in the affirmative and 18 in the negative.

Mr. Beall moved to amend the resolution by striking out all after the preamble and inserting the following, viz.: "*Resolved*, That the publisher of the *Nordlyset*, J. D. Reymert Esq., hereby is authorized and requested to translate the constitution into the Norwegian language and to distribute 4,000 extra

copies of his paper among the Norwegian residents in such manner as may be deemed expedient.

"*Resolved*, That the president of this convention shall contract with those publishers and issue his certificate to them, and the treasurer of the territory is authorized to pay the amount of the same as a part of the incidental expenses of the convention."

Mr. Gale moved to amend the amendment by inserting after the first resolution as follows: "The editor of the *Volksfreund* is authorized to translate, publish, and distribute 4,000 ["6,000" in MS] extra copies." And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 41, negative 18; for the vote see Appendix I, roll call 228].

Mr. Lovell moved to amend the amendment by substituting the following, to wit: "*Resolved*, That the president of the convention be and he is hereby authorized to contract with the publishers of the newspapers of the territory not printed in the English language, to translate the constitution into the languages in which such newspapers are respectively printed, and that the sum contracted to be paid shall be paid out of the territorial treasury on the certificate of the president of the convention." And the question having been put upon the adoption of the same, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 50, negative 7; for the vote see Appendix I, roll call 229].

Mr. Judd moved that the preamble be stricken out, which was agreed to.

The question was then put upon the adoption of the resolution, and was decided in the affirmative.

The address was then taken up, when Mr. A. G. Cole moved that the address be referred to the committee on revision and arrangement, which was disagreed to. Mr. Castleman moved that the consideration of the address be indefinitely postponed, which was disagreed to. The question was then put upon the adoption of the address, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 42, negative 18; for the vote see Appendix I, roll call 230].

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 15, article on miscellaneous provisions. Mr. McClellan moved that the article be recommitted to the committee with instructions to amend the same by striking out sections 7 and 8.

Mr. Larrabee called for a division of the question. The question was then put upon recommitting, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 20, negative 40; for the vote see Appendix I, roll call 231].

The question was then put upon the passage of the article, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 42, negative 20; for the vote see Appendix I, roll call 232].

Mr. Whiton moved that the rules be suspended for the consideration of resolutions now, which was agreed to.

Resolution No. 5, introduced by Mr. Chase this morning, relative to homestead exemption, was then taken up. And the question having been put upon the adoption of the same, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 12, negative 45; for the vote see Appendix I, roll call 233].

Resolution No. 2, introduced by Mr. Harrington this morning, was then taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

Resolution No. 6, introduced by Mr. Latham this morning, was then taken up, when Mr. Case moved that the same be referred to the committee on expenses, which was agreed to.

Mr. Featherstonhaugh introduced the following resolution, to wit: "*Resolved*, That the committee on revision and arrangement be instructed to amend the article miscellaneous provisions by striking out section 5 and inserting the following, to wit: 'All persons residing upon Indian lands within any county of this state and qualified to exercise the right of suffrage under this constitution shall be entitled to vote at the polls which may be held nearest their residence for state, United States, and county officers.'"

Mr. Sanders moved that the convention adjourn until ten o'clock on Monday morning. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 16, negative 39; for the vote see Appendix I, roll call 234].

Mr. Chase moved that Messrs. Lovell and Judd, having received the next highest number of votes on the first balloting for the committee on printing, be declared duly elected, which was disagreed to.

The President presented a communication from Messrs. Tenney, Smith and Holt, which was read. Mr. Beall moved that the communication be laid upon the table, which was disagreed to. Mr. Chase moved that the communication be referred to a select committee of three, which was agreed to. Messrs. Chase, King, and Bishop were appointed said committee.

(The substance of the communication was a peremptory refusal to accept of forty-three cents per thousand ems as the compensation for printing the journal and debates as voted by the convention. The communication being referred to a committee who did not report thereon, the reporter has not been able to obtain a copy for publication.—Reporter.)

Mr. Dunn moved that so much of the resolution adopted this morning as requires the appointment of the printing committee by ballot be rescinded, and that the convention appoint the committee viva voce, which was agreed to.

Mr. Beall moved that the convention now proceed to appoint said committee, which was agreed to.

The convention then proceeded to vote, and the votes having been counted, the secretary reported the whole number of votes given 60, of which Mr. Judd received 30; Mr. Lovell 26; Mr. Reed 21; Mr. King 16; Mr. Chase ["Case" in MS] 8; Mr. Wheeler 2; Mr. Secor 2; Mr. Fox 2; Mr. Lyman 1; Mr. Castleman 1; Mr. Hollenbeck 1; Mr. Sanders 1; Mr. Doran 1; Mr. Davenport 1; Mr. Jackson 1; Whig and Tadpole 1. There being no choice, the convention proceeded to vote the third time, and the votes having been counted the sec-

retary reported the whole number of votes given 60, of which Mr. Reed received 51; Mr. Lovell 43; Mr. Judd 23; Mr. King 4; and Mr. Case 2. Messrs. Reed and Lovell having received a majority of all the votes given were declared duly elected.

Mr. Harvey asked and obtained leave to make a personal explanation. He said that in the discussion in the forenoon he had stated that the proprietors of the *Wisconsin Argus* had charged the convention with the cost of the new type, etc., which they had purchased to print the journals with. The item in which he had supposed that charge to be included had since been explained to him to apply wholly to other matters, which were legitimate and proper charges. He therefore deemed it due, as well to himself as to the proprietors of the *Argus*, to make this explanation to the convention.

On motion of Mr. O. Cole the convention adjourned until half past eight o'clock on Monday morning.

MONDAY, JANUARY 31, 1848

Prayer by the Rev. Mr. Lord.

Mr. Vanderpoel moved that the reading of the journal be dispensed with, which was agreed to.

Mr. Fowler, from the committee on incidental expenses, made the following report:

"The committee on incidental expenses report in favor of allowing the following accounts for newspapers furnished members by order of the convention, to wit:

W. W. Wyman	$460.70
Tenney, Smith and Holt	690.91
Beriah Brown	365.35
Moritz Schœffler	69.65
J. D. Reymert	30.80
Wilson and King	48.93
Cramer and Curtis	32.52
C. L. Sholes	24.15
W. Mygatt	10.50
Bunner and Stafford	17.25
G. W. Bliss	10.50
Alden and Gratten	4.55
E. R. and F. A. Utter	3.75
E. A. Cooley	3.75
Edward Bliss	23.80
H. A. Wright	8.75
George Hyer	14.35
J. M. Goodhue	3.75
L. Leech	2.00
George W. Crabb	2.10
	$1,828.06

"The following note is appended to the bill of Messrs. Tenney, Smith and Holt, to wit: 'In addition to the above we have furnished members with 1,420 copies extra of our tri-weekly . . . $60.60'; which account the committee report against allowing the same and in favor of giving them leave to withdraw the same. Also, in favor of allowing the account of Beriah Brown for incidental printing, by direction of the convention, at $24.95.

"*Resolved*, That the president and secretary of this convention are hereby authorized to issue certificates to the persons above named for the several sums herein stated respectively.

ALBERT FOWLER
S. S. CASE
T. SECOR
S. P. HOLLENBECK

"The committee on incidental expenses, to whom was referred the following resolution, to wit: '*Resolved*, That the sum of $200 be paid to Thomas McHugh, secretary, for preparing the journal for publication, distributing

journals, and all other extra services which have been or may be imposed upon him by this convention,' recommend the adoption of the following resolution as their report:

"'*Resolved*, That the sum of $100 be paid to Thomas McHugh, in full for all services that have been or may be required of him as secretary of this convention, after it shall have adjourned.'

A. FOWLER
S. S. CASE
T. SECOR
S. P. HOLLENBECK"

Mr. Fenton introduced the following resolution, to wit: "*Resolved*, That the Rev. Messrs. Lord, Penman, and Read be allowed $50 each for services as chaplains of this convention." And the fifth rule having been first suspended for that purpose, said resolution was adopted.

Resolution No. 4, introduced by Mr. O'Connor on the twenty-eighth instant, was then taken up. Mr. O'Connor moved that the same be laid upon the table, which was agreed to.

Mr. Chase introduced the following resolution, to wit: "WHEREAS, The journal of this convention cannot be completed before the close of the session, and the work, therefore, cannot be examined and its style and workmanship ascertained; and WHEREAS, There is a great variety of opinion concerning the value of the work; therefore *Resolved*, That all orders and resolutions respecting the pay, auditing the accounts, or fixing a price for printing, stitching, and binding, or for press or other work, in the journal of this convention, be and the same are hereby rescinded, and Messrs. Tenney, Smith and Holt requested to present their account for said work to the legislature for a compensation.

W. CHASE, Chairman"

Mr. Secor moved a reconsideration of the vote taken on Saturday, the twenty-ninth instant, on the passage of the article on miscellaneous provisions.

Mr. Lovell observed that the principal object of reconsideration was to strike out all that portion of the article which related to the division of counties and the location of county seats.

Mr. Larrabee was aware that there was much difference of opinion on this subject. If the matter were left with the legislature, it would be in the power of interested persons to logroll a question of divisions of counties through the legislature. Legislatures always went into extremes and would be very apt to reduce the limits of counties too much, which produced a great additional burden to the people. This had been found to be the case particularly in Illinois. A county thirty miles square was quite small enough. He thought, too, that if the matter were left with the legislature it would cost

the state more in legislating upon it than it could possibly do if left to the people of the counties. He was of opinion that the inhabitants of the counties had a clear right to locate their own county seats; and when they had settled this matter by a vote all must be satisfied, for all would have an equal voice. If the divisions of counties was left to the legislature, new counties might be erected to carry out some particular views of some particular legislature, and the citizens of the new county would be involved in the expense of erecting county buildings and supporting county courts.

Mr. Sanders had but one word to say. So far as his immediate constituents were concerned, it was against their interests to have their county divided. As a matter of principle he would vote for reconsideration. He held that whenever people could not live in harmony together they had a right to separate.

Mr. Martin said (Mr. King being in the chair) he was in favor of reconsideration for other and weightier reasons than those which had been advanced. Some of the counties at the north, which were but little settled but were rapidly increasing in population, were of a very inconvenient size. The county of Brown contained over one hundred square miles [*sic*]. Richland and Portage were large enough to make half a dozen counties. To say that these counties could not be divided without submitting the matter to a vote of the people was ridiculous. If the motion to reconsider should prevail, he would submit a resolution to recommit with instructions to report an amendment requiring that counties should not be so divided as to reduce their limits to less than thirty miles square.

Mr. Gale said that if the only object of recommitment was to obtain an amendment such as that proposed by Mr. Martin, he would not object; but he thought that would hardly meet the object of the gentleman who had moved to reconsider.

Mr. Reed was in favor of reconsideration for the reasons assigned by Mr. Martin and for other reasons. Take as an example the county of Brown. Suppose that one portion of that county containing a population of 2,000 persons wished to be organized into a new county. Green Bay, with a population of 3,000, might oppose and could prevent this; yet the people at Green Bay might not be proper judges of what would be for the interest of the people at the other extremity of the county. He considered the consideration of these matters as coming in the province of legislation. The legislature were elected to attend to these matters as well as others.

The gentleman from Walworth (Mr. Gale) had said his county was all right as it stood. So he (Mr. Reed) could say of his own. But if the present article had been in force heretofore, what would have become of Waukesha and Jefferson?

Mr. Judd spoke.

Mr. Chase was opposed to Mr. Lovell's amendment. He thought thirty miles square was a small enough area for a county. The amendment if adopted would produce incessant efforts to cut up counties.

Mr. A. G. Cole moved a call of the convention, which was ordered, and Messrs. Estabrook, Featherstonhaugh, Harvey, and Gifford reported as absent. Messrs. Gifford and Nichols were excused from their attendance.

Mr. Kinne moved that Mr. Featherstonhaugh be excused from his attendance, which was disagreed to.

Mr. Chase moved that all further proceedings under the call be dispensed with, which was agreed to. The question was then put and was decided in the affirmative. And the ayes and noes having been called for [and ordered], those who voted in the affirmative were [affirmative 42, negative 20; for the vote see Appendix I, roll call 235].

Mr. Martin moved that the article be referred to the committee on revision and arrangement with instructions to report an amendment as follows: "That no county shall be divided unless such county shall contain an area of thirty miles square, without the same being submitted to a vote of the people of such county, and a majority of the people of the county voting on the subject shall vote for such division."

Mr. Lovell moved to amend the instructions by striking out the word "thirty" and inserting the word "twenty-four."

Mr. Lovell said that the proposition seemed to have been made for the especial convenience of the county of Dodge, all the opposition to a smaller limit of the area of counties appearing to come from that quarter. A tract of land consisting of twenty-five townships was a very convenient size for a county, and a board of twenty-five supervisors would be a very convenient number. There were many counties in other states less than thirty miles square. In the erection of new counties in a new state, they were necessarily set off larger at first than they should remain.

Mr. Judd made some remarks.

Mr. Estabrook was opposed to the amendment, because he was opposed to the whole thing. He believed the section in the article relating to this matter had its origin in private interest. He believed it would tend to embarrass legislation, and for some years after the commencement of a state government the legislature

would find it necessary to have a standing committee on county seats and lines. The article would tend to array a host in opposition to the constitution.

Mr. Larrabee considered it his duty to make a few remarks to repel the insinuations of sectional and private motives which had been made by the gentlemen from Racine and Walworth (Messrs. Lovell and Estabrook). The gentleman who had last spoken had charged that he (Mr. Larrabee) was influenced in this matter by interested motives. He was himself inclined to doubt the character and envied not the heart of a man who could make such a charge. During the last fall he (Mr. Larrabee) happened to be in Chicago and there met a gentleman who had been a member of the constitutional convention of Illinois. That gentleman had pointed out to him an amendment to the constitution of that state similar to the one now proposed by the article. As far as his own interest was concerned, his own pecuniary advantages would not be enhanced by the course proposed by the article.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 18, negative 44; for the vote see Appendix I, roll call 236].

Mr. Lovell moved the following as a substitute for the instructions: "Amend the article by striking out the section relating to the division of counties." And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 22, negative 37; for the vote see Appendix I, roll call 237].

The question was then put upon referring with instructions, and was decided in the affirmative.

The President presented a communication from the secretary of the territory containing returns of the census of St. Croix County.

Mr. Dunn, from the committee on revision and arrangement, made the following report, to wit:

"The committee on revision and arrangement respectfully report the articles on eminent domain and property of the state, [schedule, districting members of the legislature,] and apportionment of representatives, with corrections and suggestions, in which they ask the concurrence of the convention.

SCHEDULE

"Section 3. Strike out 'occur' in the third line and insert 'enure.'

"Section 4. Strike out 'over' in fourth and eighth lines; also in last line but five of the amendment substitute 'such' for 'said,' and in last line but one

'such' for 'the said.' Add to the amendment the words 'and all penalties incurred shall remain the same as if this constitution had not been adopted.'

"Section 8. Strike out all after 'United States' in the eleventh line to 'laid' in last line but one and insert 'to be'; and strike out 'fair' in second line, same section.

"Section 13. In the second line substitute 'force' for 'use'; and strike out in first and second lines the words 'have heretofore been' and insert 'are now.' In third and fourth lines strike out the words 'and the statute laws which may be in force.' Also, after 'returns' insert 'for state officers and members of Congress.'

"Section 14. Such parts of the common law as are now in force in the territory of Wisconsin, not inconsistent with this constitution, shall be and continue part of the law of this state until altered or suspended by the legislature.

"Section 14 [*sic*]. The senators first elected in the even-numbered senate districts, the governor, lieutenant governor, and the state officers first elected under this constitution shall enter upon the duties of their respective offices on the first Monday of June next and shall continue in office one year from the first Monday of January next. The senators first elected in the odd-numbered senate districts and the members of the assembly first elected shall enter upon their duties, respectively, on the first Monday of June next and shall continue in office until the first Monday in January next.

"Section 15. The oaths of office may be administered by any judge or justice of the peace, until the legislature shall otherwise direct.

"Suggest the following addition after proviso in twelfth section: 'The returns of election of senators and members of assembly shall be transmitted to the clerk of the board of supervisors or county commissioners, as the case may be, and the votes shall be canvassed and certificates of election issued, as now provided by law. In the first senatorial district the returns of the election for senator shall be made to the proper officer in the county of Brown; in the second senate district, to the proper officer in the county of Columbia; in the third senate district, to the proper officer in the county of Crawford; in the fourth senate district, to the proper officer in the county of Fond du Lac; and in the fifth senate district to the proper officer in the county of Iowa.'"

Districting Article

"In the third line substitute for 'as follows,' 'as hereinafter mentioned,' and add 'and each district shall be entitled to elect one senator or member of assembly, as the case may be'; and strike out 'and shall elect one senator' and also 'and shall elect one member of assembly,' wherever they occur.

"Suggest striking out 'apportionment article' and inserting 'districting article' next after section 11 of schedule. Also, alter proviso so as to read, 'The foregoing districts are subject, however, so to be altered as that when any new town shall be organized it may be added to either of the adjoining assembly districts.'"

The amendments were then severally concurred in.

Mr. Lovell moved that the article apportionment of representatives be laid upon the table, which was agreed to.

Mr. Root introduced the following resolution to wit:

CONSTITUTIONAL CONVENTION

To Daniel N. Johnson, Dr.

For sketching designs for coat of arms $5.00

MADISON, January 30, 1848.

"*Resolved,* That the foregoing account be allowed and a certificate issued by the president and secretary therefore."

And the rules having first been suspended for that purpose, said resolution was adopted.

The rules were then suspended for the consideration of report and resolution introduced by Mr. Fowler of the committee on incidental expenses.

Mr. Case moved to amend the report so as to read:

W. W. Wyman $600.62
Tenney, Smith and Holt 830.04
Beriah Brown 432.42

And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 33, negative 24; for the vote see Appendix I, roll call 238].

The question was then put upon the adoption of the resolution, and was decided in the affirmative.

On motion of Mr. Larrabee the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

Resolution No. 4, introduced by Mr. Chase this morning, was then taken up. Mr. Chase moved to lay the same upon the table. And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 35, negative 18; for the vote see Appendix I, roll call 239].

Mr. Dunn, from the committee on revision and arrangement, made the following report, to wit:

"The committee on revision and arrangement respectfully report the article miscellaneous provisions and the address, with corrections and suggestions, in which they ask the concurrence of the convention:

"Separate article to apportionment and election of officers.

"Section 2. Insert after 'vacant' in second line 'and also the manner of filling the vacancy.'

"And suggest that these be added to the article on miscellaneous provisions.
(The amendments were then severally concurred in.)
"The committee also report against the adoption of the address."

And the question having been put upon concurring in the report of the committee, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 34, negative 19; for the vote see Appendix I, roll call 240].

Mr. Beall introduced the following resolution, to wit: "*Resolved,* That there be allowed to the President of this convention in addition to his per diem the sum of $2.50 per day during the sitting of the same." And the rule having first been suspended for that purpose, said resolution was adopted.

Mr. Fowler, from the committee on incidental expenses, made the following report, to wit:

Convention

to Tenney, Smith and Holt, Dr.

To 1,495 extra copies *Argus*, furnished members, as follows:	
For 69 copies tri-weekly, 20 times	1,380
For 50 copies to Mr. Featherstonhaugh	50
For 15 copies to Mr. Gifford	15
For 38 copies to Mr. Reed	38
For 12 copies to Mr. Root	12
Total number of extra copies furnished members	1,495
	4
	$59.80

Note.—In addition to the above we have supplied [at least] hundreds of copies of our paper, of which we have kept no account and present no charge.

"The committee to whom was referred the above account report the individual members charged with papers stated to the committee that they would pay for the same if they had them, and that the 1,380 copies above charged have been distributed to all the members during the last twenty days, and that in the opinion of the committee it was a distribution for which neither party expected any charge. They therefore report against allowing the same.

A. Fowler, Chairman"

And the question having been put upon the adoption of the report, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 36, negative 24; for the vote see Appendix I, roll call 241].

Mr. Fowler introduced the following resolution, to wit: "*Resolved,* That there be allowed to David Holt, Jr. the sum of $1,491.33 for postage ordered by a resolution of this convention, and that the president and secretary issue their certificate for the same." And the rule having first been suspended for that purpose, said resolution was adopted.

Mr. Case presented the account of Messrs. Tenney, Smith and Holt and moved that the same be referred to the committee on incidental expenses, which was agreed to.

Mr. Fowler, from the committee on incidental expenses, made the following report, to wit:

"The committee on incidental expenses, to whom was referred the account of Messrs. Tenney, Smith and Holt for incidental printing, report in favor of allowing the contract price for such printing, including the materials for the same, at one cent.

"Also in favor of allowing their account for printing the daily journal slips, at $207.96, for the reason that in the opinion of the committee such printing is unusual in parliamentary bodies and therefore a proper extra charge.

"The balance of the account, being for materials furnished for the incidental printing and for the journals proper, a committee having been charged with the settlement of their account for printing and binding the journals, and materials for the same, and the materials furnished for the incidental printing, is included in their contract to do the incidental printing for one cent, and therefore not being an equitable charge the committee recommended that they have leave to withdraw that part of their account.

"Respectfully submitted,

A. FOWLER
S. S. CASE
T. SECOR"

The question was then put upon the adoption of the report and was decided in the affirmative.

[Mr. Judd: Mr. President—I cannot allow the present resolution to pass without saying a few words. This he did with great reluctance being well advised of a very pertinent remark to be found in the poem of *Hudibras* (the special friend of the gentleman from Grant, Mr. O. Cole) if he recollected right—(for it was more than thirty years since he had read it). The remark to which he alluded was in these words:

> That man is sure to lose
> Who fouls his hands with dirty foes.

If he could have profited by this wholesome admonition consistent with his duty, he would most cheerfully have done so; but, inasmuch as he could not, as a matter of duty he would proceed to submit a few observations.

Sir, said Mr. Judd, when the proposition was first made to elect a printer to the convention, he had with many of the gentlemen constituting a majority of the convention refused to unite in such election for the reason that he preferred to let the printing by contract to the "lowest bidder." This course was adopted by order of

the convention; proposals were issued; and the *Argus* having put in the lowest bid, it was given to that office. This was done in a fair business way and by the solemn vote of the convention. He was in earnest then and he was equally in earnest now. The *Argus* office bid "one cent" for "the incidental printing," and this being the lowest bid received, the convention had no alternative but to accept it—this the editors knew when they made their bid, and if any blame could attach anywhere, it was not to him nor to the convention, but to the editors themselves.

But, Mr. President, what have we here? A bill for printing the daily slips or journal of upwards of two hundred dollars! These slips are a part and parcel of the incidental printing as much as printing reports of committees, the articles proposed, or any other matter which was required to be printed. In fact, it was incidental in its nature, being required for the daily use of the convention as it proceeded in its labors—if anything was incidental this printing was certainly so. How then can these editors come gravely in here now and demand the pay over and above this contract? With what show of justice could they look this convention in the face when they present this bill? Sir, it is of a piece with their whole conduct since the organization of this body. It must be recollected that soon after their bid of "one cent" had been accepted the same paper came out with an article declaring they had "struck a lead," and exulting in this manner at their own folly and ending by attempting to cast ridicule upon the whole convention by declaring they would do the printing for "nothing rather than that a Whig should do it." This they had a right to do; they made such offer; and he would now hold them to their own offer. But what did this "lead" mean? Every man, at least every miner, knows what a "lead" means; it means a vein or channel by which the rich ore was to be reached; and if this was to be the end of the matter—if this bill is to be allowed—then he would with all deference allow that it was a "lead" and a rich one, too. If this remark was intended to "lead" to this result, then it had meaning! And the editors were truly entitled to great sagacity in the use they had made of the term.

There was another very extraordinary feature in this bill! He found on examination of it a charge of $314 for material for printing these journals. Upon looking over the items he found an estimate to the amount of $139.52 for paper, leaving a balance of $174.48 for the other materials! Now this sum was so large that the

gentleman from Rock (Mr. Harvey), being a man of some experience in these matters, took it for granted that it must be for "new type," which the editors had apprised us they had procured for this express purpose. And well he might. But these editors (cautious souls) had since informed the convention through that gentleman that type was no part of the charge. Now, said Mr. Judd, he did not know himself much about the materials for printing; but he did know some things and he took this occasion to say that what he did know he knew as well as any man. He had supposed that the only materials which entered into the necessary components of printing material, exclusive of type and press, were paper and ink. And if it required but $139.52 for paper, he would say that he knew it did not require $174.48 worth of ink to print $139.40 worth of paper. He might be mistaken in supposing that no other materials than paper and ink were required in printing; if he was, he hoped some gentleman would give him some information in this matter. If he was right, then he repeated what he had before said, that he knew so much ink was not required, unless, indeed, it was for the purpose of confirming the "lead" which the editors had "struck." He could not, he would not, consent in this way to confirm the anticipations of those editors.

But, Mr. President, there is more connected with this subject. These editors in a communication addressed to a committee of this convention under date of January 17, 1848 had insulted directly a majority of this body—he meant the celebrated "No-tailed Rat" communication, in which they had said they would have sixty-five cents per thousand ems for printing, or they would have nothing. This was but a part and parcel of their course during the sitting of the convention. They had attacked at one time an individual member of the convention in a gross, indecent manner, thereby showing a total disregard of the time, condition, and circumstances under which they were to indulge in the grossest and vilest assaults upon common courtesy and the freedom of debates and action of members of this body; and if it were only for himself he would take heed from another remark made by Hudibras, in these words:

> Where there's no honor to be gained
> It's lost in being maintained.

But he could not leave these "rats" in this manner—he meant the whole concern, from the head "No-tailed Rat," the "Old Rat," the

"Sharp-faced Rat," down to the "Green-eyed Rat" and all the little rats in the office. They had busied themselves this day by exhibiting to sundry members in this hall, he had been told, a seal which they proposed as a "coat of arms for the state," of which the following is a copy: (Mr. Judd here exhibited a caricature in the form of a seal with the following mottoes: Around the upper part of the circle was "Great Democratic Principles"; on the lower, "Jew the Printer"; and in the center, "One Cent.")

Here, then, said Mr. Judd, is a facsimile of what these notable gentlemen had passed around this hall today. He meant the "Old Rat" and the second in the concern, the "Sharp-faced Rat." These were considered the head of the firm. He did not know but that they had acted according to their best judgment and sense in so conducting, for he had long thought and in fact he did not believe they had any common sense from the top to the bottom of the whole shop. These are the men, then, who propose "to give tone to public opinion," to take the lead in the ranks of Democracy! Aye, sir, and, said Mr. Judd, he had been told that one of the minor rats of that office had said to gentlemen, members of this convention, within two or three days, that "he (Mr. Judd) was to be written down in that paper at any rate"; that "they had the power to do it; they could write any man down in six weeks." The same rat also said that he was disposed to mourn over the deplorable condition of certain other younger members of the convention on account of their connection with the "doomed man," and various other expressions of like tenor. Now, sir, this is the press which claims all the Democracy for itself! They will "write down" or write up any man whom they please—or, in other words, they will put every man in their collar, in their traces, and will put the bit into his mouth, and whither they will, he must go.

This insolent dictation may do for them; it may suit the meridian of "some" Democrat! But he would assure gentlemen that it did not suit "the great principle," or, if they would have it so, "the great Democratic principle." This "great principle," sir, is at war with all such ideas, in direct opposition—it was entirely antagonistical to all such doctrine. The "great Democratic principle" was in favor of the greatest good to the greatest number. And as such he would say this principle was alive and always to be found at home. Under all circumstances, in all places, this "great principle" would be found battling for equal rights, equal privileges, and

equal participation in all public places—in short, always opposed to monarchy or special privileges to any.

Now, sir, why not treat this matter coolly and dispassionately, and if anything was due these "rats," let them have their pay. He did not consider anything due them, but for the paper and ink, and for that he was ready and anxious to vote. While he said this, he would not allow them to come in here, or through this convention filch or steal from the public treasury.

Mr. Judd said he believed he had said enough. He would therefore close by saying if the *Argus* and its "rats" were to write him down, let them come on.

Lay on, MacDuff,
And dammed be he who first cries, "Hold, enough!"

Oh, such Democrats!—*Tri-weekly Express*, Feb. 3, 1848.]

On motion of Mr. King the convention adjourned until ten o'clock tomorrow morning.

TUESDAY, FEBRUARY 1, 1848

Prayer by the Rev. Mr. Read.

Mr. Castleman moved that the reading of the journal of yesterday be dispensed with, which was agreed to.

Mr. Reed introduced the following resolution, to wit: *"Resolved,* That the thanks of this convention be presented to the Hon. Morgan L. Martin for the able and impartial manner in which he has discharged the arduous and responsible duties of presiding officer." And the question having been put by the secretary, upon the adoption of the same it was unanimously decided in the affirmative.

Mr. Lewis introduced the following resolution, to wit: *"Resolved,* That Thomas McHugh, Robert L. Ream, Thomas A. B. Boyd, and Frederick S. Walling be entitled to the thanks of this convention for the faithful and efficient manner in which they have discharged their duties as secretaries." And the question having been put upon the adoption of the same, it was decided in the affirmative.

Mr. Dunn, from the committee on revision and arrangement, made the following report, to wit:

"The committee on revision and arrangement respectfully report the constitution as correctly enrolled. They also recommend the adoption of the following resolution: *'Resolved,* That Daniel N. Johnson be and he is hereby allowed $75 for enrolling the constitution; and that the president certify the same for payment, out of the treasury.'" And the question having been put upon the adoption of the resolution, it was decided in the affirmative.

Mr. Lewis introduced the following resolution, to wit: *"Resolved,* That the gentlemen employed to report the proceedings of this convention by the several papers are entitled to the thanks of this convention for the ability and impartiality with which they have discharged their duties." And the question having been put upon the adoption of the same, it was decided in the affirmative.

Mr. King introduced the following resolution, to wit: *"Resolved,* That the president of this convention be and he is hereby authorized to have the enrolled constitution with the signatures attached transcribed upon parchment, to be verified by his certificate, and that the same be deposited in the office of the secretary of the territory, and that a sum not exceeding $60 be appropriated towards defraying the expenses authorized to be incurred." And the question having been put upon the adoption of the same, it was decided in the affirmative.

The report of the committee on revision and arrangement was then taken up.

Mr. Case moved that the reading of the constitution be dispensed with, which was agreed to. The question was then put upon the passage of the constitution, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 60; for the vote see Appendix I, roll call 242].

The constitution was then signed by the president and secretary and by the members of the convention.

Mr. Dunn moved that the convention do now adjourn *sine die*, which was agreed to, when the President rose and addressed the convention as follows:

GENTLEMEN: Having accomplished the work for which this convention was called together, it only remains to declare its final dissolution. The result of our labors, if approved, becomes henceforth the supreme law of our adopted land, and whether well or ill done it stands forth as the record of our united opinions upon the form of government best suited to the condition of our people. Following the example set by the Great Architect of the universe, we may without irreverence look upon the pages of our constitution and pronounce the work of our hands to be good. It abounds in the declaration of those great principles which characterize the age in which we live, and which, under the protection of Heaven, will—nay, must—guard the honor, promote the prosperity, and secure the permanent welfare of our beloved country.

I should do injustice to my own feelings not to speak upon the present occasion in terms of high commendation of the order, respectful bearing, and courteous conduct which have marked our intercourse during our long and arduous session. All other considerations have apparently been merged in a uniform and united effort to study the public good and attain the favorable judgment of our fellow citizens.

For the complimentary language in which you have spoken of the part I have borne in your proceedings you will accept my humble and hearty thanks. It affords a testimonial of which any man may well be proud and will be ever held in grateful remembrance.

We are about to separate—many of us never to meet again on earth—and I bid you an affectionate adieu, with the fervent prayer that you may return in safety to your homes, that you may long enjoy the confidence and respect of your constituents, and that happiness and prosperity may attend you all through life.

I pronounce this body adjourned without day.

PRESIDENT CONVENTION

THOMAS M. MCHUGH, Secretary

APPENDIX I

Record of Votes on Roll Call in Convention

NUMBER OF ROLL CALL

MEMBERS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16*	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Beall	n	a	a	a	n	n	a	a	a	a	a	a	a	a	n	n	a	a	a	---	---	a	a	n	a	a	a	a	---	n
Bigge	n	a	a	a	n	n	a	a	a	n	a	a	n	a	---	---	n	a	---	a	a	a	a	a	n	n	n	a	n	a
Bishop	n	n	n	n	n	a	n	n	---	a	a	n	n	n	n	n	n	n	n	n	n	a	a	n	a	a	a	a	n	n
Brownell	---	---	---	---	---	---	---	a	a	n	a	n	n	a	n	n	n	a	a	a	a	a	n	n	a	a	a	a	n	a
Carter	n	n	n	a	n	n	a	a	a	n	a	a	n	n	n	n	n	a	a	a	---	---	---	---	---	---	---	---	a	a
Case	a	n	a	n	a	a	n	a	n	a	n	n	n	n	a	n	a	a	a	a	a	a	a	a	n	n	n	a	n	a
Castleman	a	a	a	n	n	n	a	a	a	n	a	---	---	---	---	---	---	---	---	---	---	a	a	a	n	a	n	n	n	n
Chase	n	a	a	a	n	n	a	n	n	a	a	a	a	a	a	a	n	n	a	a	a	n	n	a	n	a	a	n	n	n
Cole, Albert G.	a	a	n	n	a	a	n	a	a	a	a	n	n	n	n	n	a	a	n	n	a	a	a	n	a	a	a	a	n	a
Cole, Orsamus	a	n	a	a	n	n	a	n	n	a	a	n	n	n	n	n	a	n	a	a	a	a	a	a	a	a	---	n	n	n
Colley	a	n	a	a	---	n	a	a	a	a	n	a	n	a	a	a	n	n	n	a	n	a	n	a	n	n	n	n	n	a
Cotton	a	n	n	n	n	n	a	a	a	n	n	---	---	---	---	---	---	---	---	---	---	a	a	a	n	a	a	n	a	a
Crandall	n	n	a	---	---	---	---	n	a	a	a	a	n	a	a	n	n	n	a	a	n	a	n	a	n	n	n	n	n	a
Davenport	a	a	n	a	n	n	a	n	a	a	a	n	a	a	n	n	a	a	a	n	n	a	a	n	a	a	a	a	n	n
Doran	---	---	---	---	---	---	---	a	a	n	n	n	a	a	a	n	n	n	n	a	--	n	n	a	n	n	n	n	n	a
Dunn	a	a	n	n	a	a	n	n	n	a	n	n	n	n	n	n	a	a	n	n	a	a	a	n	a	a	a	a	n	n
Estabrook	n	a	n	n	a	a	n	a	n	a	n	a	a	a	n	n	n	a	n	n	a	n	n	n	a	a	a	n	n	n
Fagan	n	n	n	n	a	a	n	a	n	a	a	a	n	n	a	n	n	a	a	a	a	a	a	a	a	a	n	n	n	a	a
Featherstonhaugh	a	a	a	a	n	n	a	a	a	a	a	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	- -
Fenton	n	n	n	n	a	a	n	a	a	a	n	n	n	n	n	n	a	n	n	n	a	a	a	n	a	n	a	---	n	a
Fitzgerald	n	a	a	a	n	n	a	a	a	a	a	a	n	n	n	n	---	---	a	n	a	a	a	n	a	n	n	n	n	a
Folts	a	n	n	n	a	a	n	n	a	n	a	n	a	a	n	n	n	n	a	n	n	a	a	n	a	a	a	a	n	n
Foot	a	n	a	n	n	a	a	a	a	a	n	a	n	a	a	n	n	n	n	a	n	a	n	a	n	n	n	n	n	a
Fowler	n	a	n	a	n	n	a	n	a	a	a	n	n	a	n	n	---	---	n	a	a	a	a	n	a	n	n	n	---	---
Fox	n	n	n	n	a	a	n	n	n	n	n	n	n	a	a	a	a	n	---	a	a	a	a	a	a	n	n	a	n	a
Gale	a	n	a	a	n	n	a	a	a	a	a	a	a	a	a	a	a	a	a	a	a	a	a	a	n	a	a	n	n	n
Gifford	n	n	n	n	a	a	n	a	n	a	n	n	n	a	n	a	a	a	a	n	n	a	a	n	a	n	n	a	n	a
Harrington	n	n	a	n	a	n	a	a	---	a	a	a	a	n	a	a	n	n	n	a	a	a	n	a	n	n	n	a	n	a
Harvey	---	a	a	a	n	n	a	a	a	a	a	n	a	a	a	a	n	n	n	a	---	a	n	a	n	a	a	n	a	n
Hollenbeck	a	n	a	a	n	n	n	n	a	a	a	a	a	a	a	a	n	n	a	a	n	a	n	a	n	n	n	n	a	n
Jackson	n	n	n	n	a	a	n	n	n	a	n	a	a	a	a	n	n	a	a	a	n	n	a	a	n	a	n	n	a	n
Jones	n	n	a	n	n	a	a	n	a	n	a	a	a	a	n	n	n	n	n	n	n	n	a	n	n	a	a	a	n	n
Judd	a	a	a	a	n	n	a	a	a	a	a	n	n	n	n	n	a	a	n	n	a	a	a	n	a	a	a	a	n	n
Kennedy	--	---	---	---	---	---	---	a	a	a	n	n	n	n	n	n	n	n	n	n	---	a	n	n	a	n	n	a	n	a
Kilbourn	a	a	a	a	n	n	a	a	a	---	n	n	n	n	a	n	n	n	n	a	n	a	n	a	a	n	n	n	n	a

*Chase is given in record in both affirmative and negative. Evidently one is a misprint for *Case*, but there is no way to solve the difficulty.

NUMBER OF ROLL CALL

MEMBERS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
King	a	n	n	n	a	a	n	a	n	a	n	n	n	n	a	n	n	n	n	a	a	a	a	a	n	n	n	n	a
Kinne	a	a	a	n	a	a	n	a	a	n	a	n	a	a	n	n	n	n	---	n	n	a	n	n	a	n	n	a	n	a
Lakin	a	n	a	a	n	n	a	n	a	a	a	a	a	n	a	n	a	n	a	a	a	a	a	a	n	a	a	a	a	a
Larkin	a	---	---	---	---	---	---	---	n	a	n	a	n	a	a	n	n	n	---	a	n	a	n	n	a	n	n	a	n	a
Larrabee	a	a	a	a	n	n	a	a	a	a	a	a	a	a	a	n	a	a	a	a	a	n	a	a	a	a	a	a	n	n
Latham	n	n	n	n	a	a	n	a	a	n	n	n	a	a	n	n	a	n	a	n	n	a	a	n	a	n	n	a	n	a
Lewis	a	n	n	n	a	a	n	a	n	a	n	a	a	a	n	n	a	a	---	---	a	a	a	n	a	a	a	a	n	n
Lovell	a	n	n	n	a	a	n	a	a	a	n	n	n	n	n	n	a	a	n	n	a	a	a	n	a	n	a	a	n	n
Lyman	a	a	a	a	n	n	a	a	a	a	a	a	n	a	a	n	a	a	a	a	a	a	a	a	a	a	a	a	n	n
McClellan	a	n	n	n	a	a	n	a	a	a	n	n	n	a	n	n	a	a	a	n	a	a	a	n	a	a	a	a	n	n
McDowell	a	a	a	a	n	n	a	a	a	a	a	n	n	n	a	n	n	n	n	a	a	a	n	a	n	n	n	n	n	a
Martin	n	a	n	n	a	a	n	n	n	a	n	n	n	n	n	n	a	n	n	n	a	a	a	n	a	a	a	a	n	n
Mulford	n	a	n	n	a	a	n	a	a	a	n	n	n	a	n	n	n	a	n	n	a	a	a	n	a	n	n	n	n	a
Nichols	n	n	n	n	a	a	n	n	a	a	n	n	n	a	a	n	n	n	---	- -	a	a	n	a	n	n	n	a	n	a
O'Connor	---	a	a	n	n	n	a	a	a	a	n	n	n	n	n	a	n	n	n	n	a	n	n	n	a	a	a	a	n	a
Pentony	a	a	a	n	a	a	n	a	n	a	n	a	n	n	n	n	n	n	n	a	a	a	a	a	a	a	a	a	n	n
Prentiss	a	n	n	n	a	a	n	n	a	a	n	n	a	a	n	n	a	n	n	n	a	a	a	n	a	a	a	a	n	n
Ramsey	a	n	a	a	n	n	a	n	a	a	a	a	n	a	a	n	n	n	n	a	n	a	n	a	n	n	a	n	a	a
Reed	---	n	a	a	n	n	a	a	a	a	a	---	---	---	---	---	---	---	---	---	---	---	---	---	---	n	n	a	n	a
Reymert	n	a	a	n	n	n	a	a	n	a	n	n	n	a	n	n	a	n	n	n	a	a	n	n	a	n	n	a	n	a
Richardson	a	a	a	a	n	n	a	n	n	a	n	a	a	n	a	n	n	n	n	a	a	a	n	a	n	n	a	n	a	a
Root	a	n	n	n	a	a	n	a	a	a	n	n	n	n	n	n	a	n	n	n	a	a	a	a	n	a	a	a	n	n
Rountree	a	n	n	n	a	a	a	n	n	a	a	a	n	a	n	n	a	n	n	a	n	n	a	a	a	a	a	a	a	n
Sanders	a	a	a	n	n	n	a	a	n	a	a	n	a	n	n	a	a	a	a	n	a	a	a	n	a	n	n	---	n	a
Scagel	n	n	n	n	a	a	n	a	n	a	n	n	n	a	n	n	a	n	---	---	n	a	a	n	a	n	n	n	n	a
Schoeffler	n	a	a	a	n	n	a	a	a	a	a	a	n	n	n	n	a	a	a	n	a	a	a	n	a	a	n	a	a	a
Secor	n	a	a	a	n	n	a	n	a	a	a	n	a	a	a	n	n	a	a	n	a	a	n	a	a	n	n	a	n	a
Stedman	a	n	a	n	n	n	a	a	a	a	a	a	n	n	a	n	a	a	a	a	---	---	---	---	---	---	---	---	---	---
Turner	a	n	n	n	a	a	n	a	a	a	n	---	---	---	---	---	---	---	---	---	a	a	a	n	n	n	n	a	n	a
Vanderpoel	a	n	a	n	n	n	a	n	a	a	a	a	a	a	n	n	n	n	n	n	a	a	n	n	a	a	a	a	n	a
Ward	a	---	a	a	n	n	a	a	a	a	a	---	a	n	a	n	n	n	n	a	a	a	n	a	n	a	a	a	a	a
Warden	n	a	a	n	n	n	a	---	a	a	a	a	a	a	a	n	a	a	---	---	n	a	a	n	a	a	a	a	n	n
Wheeler	n	n	n	n	a	a	n	a	n	a	n	n	n	n	n	a	a	n	---	---	n	a	a	n	a	n	a	a	n	a
Whiton	a	a	a	a	n	n	a	n	a	a	a	a	a	a	a	n	n	n	n	a	n	a	n	a	n	a	a	n	n	n

NUMBER OF ROLL CALL

MEMBERS	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60
Beall	a	a	a	n	a	a	n	---	a	n	n	a	a	n	n	a	a	n	---	---	---	---	a	a	a	a	n	a	a	n
Biggs	---	a	a	n	a	a	n	a	a	a	n	a	a	a	n	a	a	n	a	n	n	n	n	a	a	b	n	a	n	a
Bishop	a	a	n	n	n	n	a	a	a	n	n	n	n	n	n	a	a	n	a	n	n	---	a	a	a	a	n	---	a	a
Brownell	a	a	n	n	a	a	a	a	a	n	n	a	n	n	n	a	a	n	a	a	a	n	a	---	---	---	---	---	---	a
Carter	a	a	n	n	a	n	a	a	a	a	a	a	a	n	a	n	a	a	a	a	a	a	a	a	n	---	n	n	a	a
Case	n	a	n	n	n	n	a	a	a	n	a	n	a	n	a	---	a	a	n	a	a	a	n	a	a	n	n	n	a	n
Castleman	a	a	a	n	a	a	n	a	a	a	a	n	n	a	a	n	a	a	n	a	n	n	---	---	---	---	---	---	n	n
Chase	a	a	n	n	a	n	n	a	a	n	a	n	a	n	a	n	n	a	n	a	a	a	n	a	a	a	n	a	a	a
Cole, Albert G.	a	a	n	n	n	n	a	a	a	n	a	n	n	n	a	n	a	a	a	a	a	n	n	n	n	n	n	a	a	n
Cole, Orsamus	a	a	n	n	n	n	---	a	a	a	n	a	---	a	n	a	n	n	n	n	n	n	n	a	n	n	a	n	n	n
Colley	a	a	a	n	a	a	n	a	a	n	a	n	a	n	a	n	a	a	n	a	a	a	n	a	a	a	n	n	n	n
Cotton	n	a	n	n	n	n	a	a	a	a	n	n	a	a	a	a	n	n	a	n	a	n	a	a	n	a	n	---	a	a
Crandall	---	a	a	n	a	a	n	a	a	n	a	n	---	n	a	n	a	a	n	a	a	n	n	---	a	a	---	n	a	n
Davenport	a	a	---	n	a	a	n	a	a	n	n	n	a	n	a	n	n	a	a	a	---	a	n	a	n	a	n	a	a	n
Doran	n	n	n	n	n	n	a	n	a	n	n	a	n	n	a	a	a	n	a	n	a	a	a	n	a	n	a	n	---	a
Dunn	a	n	n	n	n	a	a	a	a	a	n	a	n	a	n	a	a	n	---	---	---	---	---	---	---	---	---	---	---	---
Estabrook	---	--	n	a	n	n	a	a	a	a	n	a	n	n	a	n	a	a	a	a	a	a	a	a	---	---	---	n	a	a
Fagan	a	a	n	n	a	a	a	a	a	n	a	a	n	n	n	a	a	a	a	a	a	a	a	a	a	a	n	a	a	n
Featherstonhaugh	---	---	---	---	a	a	n	a	a	n	n	a	a	n	n	a	n	n	a	---	n	---	a	n	a	a	n	a	a	n
Fenton	a	a	n	a	n	n	a	a	a	a	n	n	n	a	n	a	n	n	n	n	n	---	a	a	n	n	n	n	n	a
Fitzgerald	---	---	---	---	a	a	n	a	a	n	n	a	a	n	n	a	a	n	a	a	a	a	a	a	a	---	n	a	a	n
Folts	a	a	n	a	n	n	a	a	a	a	n	n	n	n	n	a	a	n	a	n	n	a	a	a	n	n	n	a	a	a
Foot	a	a	a	n	a	a	n	a	a	n	a	n	a	n	a	n	n	a	a	a	a	a	n	a	a	a	n	n	a	n
Fowler	---	---	n	n	a	n	a	a	a	n	n	a	n	n	n	a	n	n	a	n	n	a	a	a	a	n	a	a	n	a
Fox	n	n	n	n	n	n	a	n	a	n	n	a	n	n	n	a	n	n	a	a	a	a	a	a	a	n	a	a	a	a
Gale	a	a	n	a	a	a	n	a	a	n	a	a	a	n	a	n	n	a	n	n	a	a	a	a	a	a	n	n	a	n
Gifford	a	a	n	n	n	n	a	a	a	n	n	a	---	n	a	n	n	a	n	a	a	a	n	a	a	a	a	---	a	a
Harrington	n	n	n	n	n	n	a	a	a	a	a	n	n	n	a	n	a	a	a	n	a	n	n	a	a	a	n	n	a	a
Harvey	---	---	a	n	a	---	n	a	a	n	a	a	a	n	a	n	a	a	a	a	a	---	---	a	a	a	---	n	---	n
Hollenbeck	a	n	a	n	a	n	n	a	a	n	n	a	a	a	n	a	a	n	n	n	n	a	---	a	---	---	---	a	n	n
Jackson	n	n	n	n	n	a	a	a	a	a	a	n	n	n	a	n	n	a	a	a	a	n	a	a	a	a	a	a	a	a
Jones	n	a	n	n	a	a	n	a	a	a	n	n	n	n	n	a	n	n	a	n	n	a	a	a	a	a	n	a	a	n
Judd	a	a	a	n	a	a	n	a	a	n-a	a	n	a	n	a	n	a	a	a	a	a	a	a	a	a	a	n	n	a	n
Kennedy	a	a	---	---	---	---	---	---	---	---	---	---	---	n	n	a	a	n	a	n	n	n	a	n	n	n	n	n	n	n
Kilbourn	n	a	n	a	n	n	a	a	a	a	n	n	n	n	n	a	n	n	a	n	a	n	a	a	n	n	n	n	a	a

NUMBER OF ROLL CALL

MEMBERS	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60
King	a	a	n	a	n	n	a	a	a	a	a	n	a	n	a	n	n	a	a	a	a	n	a	n	n	n	n	n	a	a
Kinne	a	n	n	a	n	n	a	a	a	n	n	n	n	n	n	a	n	n	a	n	a	n	a	a	a	a	n	n	a	a
Lakin	a	a	n	---	a	n	---	a	a	n-a	n	n	a	a	n	a	n	n	n	n	n	n	n	n	n	n	n	n	n	a
Larkin	a	a	n	n	n	n	a	a	a	--	n	a	n	n	a	n	n	a	a	a	a	n	---	a	---	---	-	n	a	a
Larrabee	a	a	a	n	a	a	n	a	a	n	a	n	a	n	a	n	n	a	a	a	a	a	n	a	a	a	a	a	a	n
Latham	a	n	n	a	n	n	a	a	---	--	---	---	n	n	n	a	n	n	a	n	a	n	a	a	a	a	n	n	a	a
Lewis	a	a	n	n	n	n	a	a	a	n	a	n	n	n	a	n	n	a	---	a	a	a	a	a	a	a	n	---	a	---
Lovell	---	a	n	a	n	n	a	a	a	a	n	n	n	n	a	n	n	a	a	a	a	n	a	n	n	a	n	a	a	a
Lyman	n	a	a	n	a	a	n	a	a	n	n	n	a	n	a	n	n	a	a	a	a	a	a	a	a	n	a	a	a	n
McClellan	a	a	---	n	n	a	n	a	a	a	a	a	a	n	a	n	n	a	a	a	a	n	a	n	a	n	a	a	a	a
McDowell	n	a	a	n	a	a	n	a	a	a	n	n	n	a	a	n	n	a	n	a	a	n	a	a	a	a	n	n	a	a
Martin	a	a	n	n	n	a	a	a	a	n	n	n	n	n	n	a	n	n	a	n	n	a	a	n	n	a	n	n	a	n
Mulford	n	n	n	a	n	n	a	a	a	n	n	a	n	n	a	n	a	a	a	a	a	a	a	a	a	a	n	n	a	a
Nichols	n	a	n	a	n	n	a	a	a	n	n	n	n	n	n	a	n	n	a	a	a	a	---	a	n	a	n	a	a	a
O'Connor	a	a	n	a	n	n	a	a	a	n	n	n	n	a	n	a	n	n	a	n	n	a	a	n	n	a	a	a	a	a
Pentony	a	a	n	a	n	a	a	a	---	n	n	a	n	n	n	a	a	n	a	a	a	a	a	a	a	a	a	a	a	n
Prentiss	a	a	n	n	n	a	a	a	a	a	n	n	n	n	n	a	a	n	---	n	n	n	a	n	a	a	n	a	a	a
Ramsey	n	a	a	n	n	a	n	a	a	a	n	n	a	a	n	a	n	n	n	n	a	n	a	n	n	n	n	n	a	a
Reed	a	a	a	a	a	n	n	a	a	a	a	n	a	a	a	n	a	a	a	a	a	---	---	---	n	n	a	n	a	a
Reymert	n	a	n	n	n	a	n	a	a	n	n	n	n	n	a	n	n	a	a	a	a	a	a	a	a	a	n	n	---	n
Richardson	a	n	n	n	n	a	n	a	a	a	n	n	a	a	n	a	n	n	n	n	n	a	n	n	n	a	a	n	n	n
Root	a	a	n	a	n	n	a	a	a	n	a	a	a	a	a	n	a	a	a	a	a	a	a	n	n	a	a	a	a	a
Rountree	a	a	n	n	a	a	n	a	a	a	n	n	a	a	n	a	n	n	n	n	n	a	n	a	n	a	a	a	n	n
Sanders	n	n	n	n	n	a	n	a	a	n	n	a	a	n	a	---	a	a	a	a	a	n	a	n	a	a	a	a	a	n
Scagel	a	a	n	n	n	n	a	a	a	n	a	n	n	n	a	a	---	a	a	a	a	a	n	a	a	a	n	a	a	a
Schoeffler	a	a	---	n	a	a	n	a	a	n	n	n	a	n	n	a	n	n	a	n	n	a	a	a	n	n	a	a	a	n
Secor	n	a	a	n	a	a	n	a	a	n	n	a	a	n	a	n	a	a	a	a	a	a	a	a	n	n	a	n	a	n
Stedman	a	a	--	---	---	--	---	---	---	---	---	---	---	a	a	n	n	a	a	a	a	---	a	a	a	n	a	a	a	n
Turner	n	a	n	a	n	n	a	a	a	a	n	n	n	n	n	a	n	n	a	n	n	n	a	n	n	a	n	n	a	a
Vanderpoel	a	a	n	n	a	a	n	a	a	n	n	a	a	n	n	a	n	n	a	n	a	n	a	n	a	a	n	a	a	n
Ward	a	a	---	---	a	a	n	---	a	---	---	---	a	n	n	a	a	n	---	---	n	---	--	a	---	---	---	a	n	n
Warden	a	a	a	n	a	n	n	---	---	a	n	a	a	n	n	a	n	n	a	n	n	a	---	---	---	---	---	---	a	n	n
Wheeler	n	n	n	n	n	n	a	n	a	n	n	a	n	n	n	a	a	n	a	n	a	n	a	n	a	a	n	a	a	a
Whiton	a	a	a	n	a	a	n	a	a	a	a	a	a	n	a	n	a	a	a	a	a	a	a	a	n	n	n	a	a	n

NUMBER OF ROLL CALL

MEMBERS	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90
Beall	a	a	a	n	n	n	n	a	a	a	n	n	a	a	---	n	a	a	a	a	n	n	a	a	a	n	a	a	a	a
Biggs	n	n	n	n	a	---	a	n	a	a	n	n	a	a	a	a	a	a	n	a	n	n	a	---	---	n	a	a	a	a
Bishop	a	a	a	a	n	n	n	a	a	n	a	n	a	a	n	n	a	---	a	n	n	n	n	a	a	a	a	n	n	a
Brownell	n	n	a	a	n	a	a	a	a	a	---	---	a	a	a	n	a	a	---	-	a	a	a	n	---	a	a	a	a	a
Carter	a	a	a	n	a	a	a	a	a	a	n	n	---	---	n	--	a	n	n	a	n	n	n	a	a	--	---	---	---	---
Case	n	n	n	n	a	a	a	a	a	a	n	n	a	a	n	a	a	n	n	a	n	n	n	a	a	n	a	a	a	n
Castleman	n	n	n	n	a	a	n	n	n	a	n	n	a	a	n	a	a	a	a	a	n	---	a	---	a	n	a	a	a	a
Chase	a	a	a	n	a	a	a	a	n	a	n	n	a	a	n	a	n	n	n	a	a	a	n	a	n	n	a	a	a	n
Cole, Albert G.	a	a	a	n	n	n	n	n	a	n	n	n	a	a	n	n	n	n	a	a	n	n	n	a	a	a	n	n	a	a
Cole, Orsamus	n	n	n	n	a	a	a	a	n	n	n	n	a	a	a	a	n	n	n	a	n	n	a	a	n	a	a	n	n	n
Colley	a	n	n	n	a	a	a	a	a	a	n	n	a	a	a	n	n	a	n	a	n	n	a	a	a	a	a	n	n	n
Cotton	n	n	n	n	n	n	n	n	a	a	n	n	a	a	n	a	a	n	a	n	n	n	n	a	n	n	a	a	n	n
Crandall	n	n	n	---	a	n	a	a	a	a	n	n	---	---	---	--	---	---	---	---	---	---	---	a	n	n	a	a	n	n
Davenport	a	a	a	n	a	a	a	a	a	a	n	n	a	a	n	n	n	n	n	a	n	n	n	a	a	a	n	n	a	n
Doran	n	n	n	n	a	a	a	n	n	n	n	a	a	n	a	a	n	---	n	a	n	n	n	a	n	n	a	a	a	a
Dunn	---	---	---	---	---	---	---	---	---	---	n	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Estabrook	a	n	n	n	n	a	n	a	n	n	n	n	a	a	a	a	a	a	a	a	n	n	a	a	a	n	a	n	a	a
Fagan	n	a	a	n	a	a	a	a	n	a	---	n	a	a	n	n	n	n	n	a	n	n	a	a	a	n	a	a	a	n
Featherstonhaugh	a	a	a	n	a	a	a	n	n	a	n	n	---	a	---	a	a	a	a	a	n	n	n	a	a	---	---	---	---	---
Fenton	a	a	a	n	n	a	n	n	n	n	n-a	n	a	a	n	a	a	n	a	a	n	n	n	a	n	a	n	n	n	a
Fitzgerald	n	a	a	a	a	a	a	a	a	a	a	n	n	a	a	a	a	n	a	n	a	n	n	a	---	---	a	a	a	a
Folts	a	a	a	n	n	n	n	a	a	a	a	n	n	a	a	n	a	a	n	a	a	n	n	n	a	a	a	a	n	n
Foot	n	n	n	n	a	a	a	a	a	a	a	n	n	a	a	a	a	n	a	n	a	n	n	n	a	n	n	a	n	n
Fowler	n	n	n	n	---	n	n	a	n	a	n	a	a	a	a	a	n	a	n	a	n	n	n	n	a	---	n	a	a	a
Fox	n	n	n	a	a	a	a	a	a	a	---	a	a	a	n	a	a	n	a	n	---	---	n	---	n	a	a	n	n	a
Gale	n	n	n	n	a	a	a	a	a	a	n	a	---	---	---	---	---	---	---	---	---	---	---	---	---	---	a	a	a	n
Gifford	n	n	a	---	n	n	n	a	a	n	n	n	a	a	n	a	a	a	n	a	n	n	n	a	a	n	a	a	a	a
Harrington	n	n	n	n	n	n	n	a	a	a	n	n	a	a	a	a	a	a	a	a	n	n	n	a	n	a	a	a	a	n
Harvey	a	a	n	n	n	a	n	n	n-a	a	n	n	a	a	---	a	a	a	a	a	n	n	---	---	a	---	a	n	n	n
Hollenbeck	n	n	n	n	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Jackson	a	n	a	n	a	a	a	a	n	n	n	n	a	a	n	n	n	a	n	a	a	n	n	a	n	n	a	a	n	n
Jones	a	a	a	n	n	n	n	a	n	a	n	n	a	a	a	---	---	---	---	---	---	---	---	---	---	a	a	n	n	n
Judd	a	a	a	n	n	n	a	n	a	a	n	n	a	a	n	n	a	a	a	a	n	n	n	a	a	a	a	a	a	a
Kennedy	a	a	a	n	a	a	a	a	a	a	n	n	a	a	a	a	a	a	a	n	n	n	---	a	a	a	a	a	n	a
Kilbourn	n	n	n	n	n	n	n	a	n	a	n	n	a	a	n	n	a	n	a	a	n	n	n	a	n	n	a	n	n	a

NUMBER OF ROLL CALL

MEMBERS	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90
King	n	n	n	n	a	a	a	n	a	n	n	n	a	a	a	n	n	a	n	a	n	n	a	a	n	n	a	a	n	n
Kinne	n	n	n	n	n	n	n	a	a	n	n	n	---	---	---	---	---	---	---	---	---	---	---	---	---	n	---	a	n	n
Lakin	n	n	n	n	a	a	a	n	n	n	n	n	n	a	a	a	n	n	n	a	n	n	a	a	n	a	a	a	n	n
Larkin	a	a	a	n	a	---	a	a	a	n	n	n	a	a	a	---	a	n	n	n	---	n	n	---	n	a	n	n	n	a
Larrabee	a	a	a	n	a	a	a	a	a	a	n	n	a	a	n	n	a	a	n	a	a	n	n	a	n	n	n	n	n	n
Latham	n	n	n	n	n	a	a	n	a	n	n	n	a	a	n	n	a	n	a	a	n	n	n	a	n	n	a	a	n	n
Lewis	a	a	a	n	a	a	a	a	a	a	n	a	---	---	a	---	a	a	---	---	---	---	---	---	a	n	a	a	n	n
Lovell	n	n	n	n	n	n	n	n	n	n	n	n	---	a	n	n	a	n	a	a	n	n	n	a	a	n	a	n	a	a
Lyman	n	a	a	n	a	a	a	a	n	a	n	n	a	a	---	n	n	a	n	a	n	n	n	a	n	a	a	a	n	n
McClellan	a	n	a	n	n	n	n	a	a	n	n	n	a	a	n	n	a	a	a	a	n	n	n	a	a	n	a	a	a	n
McDowell	n	n	n	n	a	a	a	a	a	a	n	n	a	a	---	n	n	a	n	a	n	n	a	a	n	n	a	a	a	n
Martin	a	n	a	n	n	a	n	n	a	n	n	n	a	a	---	n	a	n	a	a	n	n	n	a	n	n	a	n	n	a
Mulford	a	n	n	n	n	a	n	a	a	n	n	n	---	a	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Nichols	n	n	---	---	a	a	a	a	n	a	n	n	---	---	n	n	a	n	a	a	---	---	---	a	n	n	a	a	n	a
O'Connor	a	a	a	a	n	n	n	n	n	a	---	n	a	a	n	a	a	n	a	a	n	n	n	a	a	---	a	n	a	a
Pentony	a	a	a	n	a	a	a	n	a	a	n	a	a	a	n	a	a	n	n	a	n	n	n	a	a	n	a	a	a	n
Prentiss	n	n	a	n	n	a	n	n	a	n	n	n	a	a	n	n	a	n	a	a	n	n	n	a	n	n	a	n	a	a
Ramsey	n	n	n	a	a	a	a	a	n	a	n	n	a	a	a	a	n	n	n	a	n	n	n	a	a	a	a	n	a	a
Reed	a	a	a	n	a	a	a	n	a	a	n	n	n	a	a	n	a	a	a	a	a	n	a	a	a	n	a	a	a	n
Reymert	a	n	a	n	n	a	n	a	a	a	n	n	a	a	a	n	a	n	a	a	n	n	n	a	n	n	a	n	n	a
Richardson	n	n	n	a	a	a	a	a	n	a	---	n	n	n	a	a	n	n	n	a	n	n	a	a	n	a	a	n	n	a
Root	a	n	n	n	n	n	n	n	a	a	n	n	a	a	n	n	a	a	a	a	n	n	a	a	a	n	a	a	a	a
Rountree	n	n	n	n	a	---	a	a	n	a	n	n	a	a	a	a	n	n	n	a	n	n	a	n	n	n	a	n	n	n
Sanders	a	n	a	n	n	n	n	a	n	a	n	n	a	a	--	n	a	a	a	a	n	n	n	a	a	a	n	n	a	a
Seagel	a	a	a	n	n	a	a	a	a	n	n	n	a	a	n	n	a	n	n	a	n	n	n	a	a	n	a	a	n	a
Schoeffler	a	a	a	n	a	a	a	a	a	a	n	a	a	a	a	n	a	n	---	n	a	n	n	n	a	a	n	a	n	n
Secor	a	a	a	n	a	a	a	a	a	n	a	n	n	a	a	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Stedman	a	a	a	n	a	a	a	a	n	a	n	n	a	a	n	n	n	a	n	n	n	n	n	a	n	a	---	a	n	n
Turner	---	n	a	n	n	n	n	n	n	n	n	n	a	a	---	n	a	a	a	a	n	n	n	a	a	n	a	a	n	n
Vanderpoel	a	a	a	n	a	a	a	a	n	a	n	n	a	a	---	---	---	---	---	---	---	---	---	a	a	n	a	n	n	a
Ward	a	a	a	n	--	-	a	a	n	a	n	n	---	---	---	n	n	a	n	---	n	n	n	a	a	---	---	a	a	n
Warden	a	a	a	n	n	n	n	a	n	a	n	n	---	---	---	---	---	---	---	a	n	n	a	n	a	n	a	a	n	n
Wheeler	a	n	n	a	a	a	a	a	a	n	- -	n	a	a	n	n	a	a	a	n	---	---	---	a	a	a	a	n	a	a
Whiton	n	n	n	n	a	a	a	n	a	a	n	n	a	a	n	n	n	n	n	a	n	n	n	a	n	n	n	n	a	n

NUMBER OF ROLL CALL

MEMBERS	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120
Beall	n	n	n	a	a	a	a	a	a	n	a	n	n	n	a	a	a	n	n	n	a	n	n	n	a	a	n	n	n	n
Biggs	a	a	a	---	---	---	---	---	---	n	a	a	a	n	n	n	---	a	a	n	n	n	n	n	a	a	a	a	a	a
Bishop	n	n	a	a	--	a	a	n	n	n	a	n	a	n	a	a	---	n	n	n	a	a	a	n	n	a	n	n	n	n
Brownell	n	n	a	---	a	a	a	n	a	n	a	a	n	n	a	a	a	n	---	n	a	a	n	n	n	a	n	n	n	n
Carter	---	---	---	--	---	--	---	---	---	---	---	---	---	---	---	---	-	---	--	---	---	---	---	---	---	---	---	---	---	---
Case	a	a	a	n	n	n	a	n	n	n	n	a	n	n	a	a	a	a	n	n	a	---	n	n	n	a	a	a	a	n
Castleman	a	a	n	n	n	a	---	n	n	n	n	---	n	n	n	n	a	a	a	a	n	n	n	n	n	a	a	a	a	a
Chase	n	n	a	a	a	a	a	n	a	a	n	n	a	a	a	a	a	n	n	n	a	a	n	n	a	a	n	n	a	n
Cole, Albert G.	a	a	a	n	a	n	a	n	n	n	a	a	n	n	a	a	a	a	a	n	a	a	n	n	a	a	a	a	a	n
Cole, Orsamus	n	n	a	n	n	n	a	n	a	a	n	n	n	n	a	a	n	n	a	a	a	n	---	---	n	n	n	n	n	a
Colley	a	a	---	n	n	n	n	a	n	n	n	a	n	n	n	n	n	a	n	n	a	n	n	n	a	a	a	a	a	n
Cotton	n	a	n	n	n	a	n	a	n	n	---	---	-	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	a	---
Crandall	n	a	n	n	n	n	n	a	n	n	n	a	n	n	n	n	n	a	n	n	a	a	n	n	a	---	a	a	a	a
Davenport	a	a	a	n	a	a	a	a	n	n	n	n	n	n	n	n	a	a	n	n	a	a	n	n	a	a	a	a	a	n
Doran	n	a	n	n	n	n	a	a	n	n	n	a	---	n	n	n	a	a	a	a	n	a	n	n	n	n	a	a	a	a
Dunn	---	---	---	--	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Estabrook	n	n	a	a	a	a	a	n	a	a	a	n	a	n	a	a	a	n	a	a	a	n	n	n	n	n	n	n	a	a
Fagan	n	n	n	a	a	a	a	n	a	n	a	a	a	n	a	a	a	n	n	n	a	n	n	n	n	a	n	n	n	n
Featherstonhaugh	n	---	---	---	---	---	---	---	---	---	--	n	n	n	n	n	a	--	---	---	a	a	a	n	a	a	a	a	a	n
Fenton	n	n	a	n	a	a	a	---	a	n	a	n	a	n	a	a	n	--	a	n	---	n	-	---	---	---	---	n	n	a
Fitzgerald	n	---	--	n	a	n	a	n	n	n	a	a	n	n	a	a	a	n	a	a	n	n	n	n	n	n	n	n	a	a
Folts	n	n	a	a	a	a	a	n	a	n	a	a	n	n	a	a	a	a	n	n	a	a	n	n	a	a	n	a	a	a
Foot	a	a	n	n	n	n	a	n	n	n	n	a	n	n	n	n	n	a	n	n	a	n	n	n	a	a	a	a	a	n
Fowler	n	n	n	n	n	n	n	a	n	n	---	---	---	---	---	---	---	a	n	n	a	a	n	n	---	a	a	a	a	n
Fox	n	n	a	a	a	a	a	n	n	a	---	n	a	n	a	a	n	n	n	n	n	n	n	n	n	n	n	n	a	a
Gale	a	a	n	n	n	n	a	n	n	a	n	a	n	n	n	a	a	a	n	n	a	a	n	n	a	a	a	a	a	n
Gifford	n	n	a	a	a	n	a	n	a	n	a	a	n	n	a	a	a	a	a	a	n	n	n	n	n	n	a	a	a	---
Harrington	n	n	n	n	a	a	a	n	n	n	n	n	n	n	a	a	a	a	n	n	a	a	n	n	n	a	a	a	a	a
Harvey	a	a	n	n	n	n	---	a	n	n	n	a	n	n	a	a	a	a	a	a	---	n	n	n	a	a	a	a	a	n
Hollenbeck	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Jackson	a	a	a	n	a	a	a	n	n	n	n	a	n	n	a	n	n	a	a	a	n	n	n	n	n	a	a	a	a	n
Jones	n	n	n	a	a	n	a	n	---	n	a	n	n	n	a	a	a	n	n	n	a	a	n	n	a	a	n	n	a	a
Judd	a	a	a	n	a	n	a	n	a	a	a	n	n	n	a	a	---	a	n	n	a	n	n	n	a	a	a	a	a	a
Kennedy	n	n	n	a	n	a	n	a	n	a	---	a	n	n	a	a	a	n	n	a	n	n	n	n	n	n	a	a	a	a
Kilbourn	a	n	a	n	n	a	n	a	n	n	a	a	n	n	n	n	a	a	a	a	n	n	n	n	n	n	a	a	a	n

NUMBER OF ROLL CALL

MEMBERS	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120
King	a	a	a	n	n	n	a	n	n	n	n	a	n	n	a	a	n	a	a	a	n	n	n	n	n	n	a	a	a	a
Kinne	n	n	a	n	---	a	a	n	n	n	a	n	n	a	a	a	n	n	n	n	a	a	n	n	a	a	n	n	a	-
Lakin	n	n	n	n	n	n	n	n	n	n	n	n	n	n	a	a	n	n	a	a	a	n	n	n	a	a	a	a	a	a
Larkin	a	n	n	n	a	n	---	a	n	n	a	a	n	n	a	a	a	n	n	n	a	n	---	n	n	a	n	n	a	a
Larrabee	n	a	n	a	a	n	a	n	a	a	a	n	a	n	a	a	a	n	a	a	a	n	n	n	a	a	n	n	a	n
Latham	n	n	a	a	a	a	a	n	a	n	n	n	a	n	a	a	n	n	a	a	n	a	n	n	n	---	n	n	a	n
Lewis	n	n	n	a	a	n	a	n	a	n	a	a	n	n	n	n	a	a	n	n	a	a	n	n	n	---	a	n	a	n
Lovell	n	n	n	n	a	n	a	n	n	n	a	a	a	n	a	a	a	n	a	a	a	a	n	n	a	a	n	n	a	n
Lyman	a	a	n	n	n	a	a	n	a	a	n	a	n	n	a	a	a	a	a	n	a	a	n	n	a	a	a	a	a	n
McClellan	n	n	n	n	a	n	n	a	a	n	a	n	a	n	n	n	a	a	n	n	a	a	n	n	a	a	a	a	a	---
McDowell	a	a	a	n	n	a	a	n	n	n	a	a	n	n	n	n	a	a	a	a	n	n	n	n	n	a	a	a	a	a
Martin	n	n	n	n	a	a	n	a	a	a	a	n	a	n	a	a	a	n	n	a	a	a	n	n	n	a	n	n	n	a
Mulford	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	n	n	a	a
Nichols	n	n	a	a	n	n	a	n	a	n	a	a	n	n	a	a	a	n	n	n	a	a	n	n	n	a	n	n	a	a
O'Connor	n	n	a	n	n	a	a	n	a	n	a	a	a	n	a	a	a	n	a	a	a	n	n	n	a	a	n	n	n	a
Pentony	n	n	a	a	a	n	a	n	a	n	a	a	a	n	a	a	a	n	n	n	a	a	n	a	a	a	n	n	a	a
Prentiss	a	n	n	a	a	a	a	n	n	n	a	a	n	a	n	n	a	a	n	a	n	n	n	n	a	a	a	a	a	n
Ramsey	n	n	a	n	n	a	a	n	a	a	a	a	a	n	a	a	a	n	n	n	a	n	n	a	a	a	n	n	a	a
Reed	a	a	a	n	n	n	n	n	n	a	n	a	n	n	a	a	---	a	a	a	n	n	n	n	n	n	a	a	--	a
Reymert	n	n	n	n	a	n	a	a	n	n	a	a	n	n	a	a	---	a	a	n	---	a	n	n	a	a	a	a	a	---
Richardson	a	n	n	n	n	n	a	n	a	a	a	a	n	n	a	a	a	n	a	a	a	n	n	n	n	a	n	n	n	a
Root	n	n	a	n	n	n	a	n	n	n	a	a	n	n	a	a	a	a	a	a	n	n	n	n	n	n	a	a	a	a
Rountree	n	n	a	a	a	a	n	a	a	n	n	n	a	n	a	a	a	n	n	n	a	n	n	n	n	a	a	n	n	n
Sanders	a	a	a	a	a	---	n	a	n	n	a	a	n	---	---	---	---	a	a	n	a	n	n	n	n	a	a	a	---	a	n
Seagel	n	n	n	a	a	n	n	a	a	n	n	a	n	n	a	a	a	n	n	n	a	a	n	n	a	a	a	n	n	a
Schoeffler	n	n	n	a	a	a	n	a	a	n	n	n	n	n	a	a	n	n	a	a	---	a	n	n	a	n	n	n	n	n
Secor	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Stedman	a	a	n	n	n	n	n	n	n	n	n	a	n	n	n	n	a	a	n	n	n	n	n	n	n	a	a	n	a	n
Turner	a	n	n	a	a	n	a	n	n	n	n	n	n	n	a	a	a	a	n	n	a	a	n	n	n	n	a	a	a	n
Vanderpoel	n	n	n	n	a	n	a	n	a	a	a	a	n	n	a	a	a	n	n	a	n	n	n	n	a	a	n	n	a	a
Ward	n	n	n	---	---	---	---	n	---	---	a	a	n	n	a	a	a	a	n	n	a	n	---	---	a	a	a	a	a	---
Warden	n	n	a	n	n	a	a	--	a	---	a	n	a	n	a	a	n	n	a	a	n	a	a	n	n	n	n	n	n	a
Wheeler	n	n	a	a	a	a	a	n	a	a	a	n	a	a	a	a	a	n	n	n	a	n	n	n	n	n	n	n	n	n
Whiton	a	a	n	n	n	n	a	a	n	a	n	a	n	n	a	a	n	a	a	n	a	n	n	n	a	a	a	a	a	n

NUMBER OF ROLL CALL

MEMBERS	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150
Beall	n	n	n	a	a	a	a	a	a	n	n	n	a	a	a	a	a	n	n	n	n	n	n	a	n	a	a	a	a	a
Biggs	---	a	a	a	---	---	a	a	a	---	n	n	a	a	---	a	a	a	n	a	a	a	a	n	---	---	a	---	---	---
Bishop	n	n	n	n	a	a	a	a	a	n	n	n	a	a	a	a	a	n	a	n	n	n	n	a	a	a	n	a	a	n
Brownell	n	n	n	--	---	a	a	a	a	a	a	n	n	n	n	a	a	a	n	a	a	n	n	a	a	a	a	a	a	a
Carter	---	---	---	---	---	a	a	a	a	a	a	n	a	a	a	a	a	a	n	a	a	a	a	n	a	---	---	---	---	n
Case	n	n	n	a	a	n	---	a	a	a	a	n	a	n	a	a	n	a	n	a	a	---	a	a	a	n	a	a	a	a
Castlemann	n	a	a	a	a	a	n	a	a	a	a	---	n	n	a	a	n	a	n	a	a	a	a	a	n	n	a	a	n	a
Chase	a	n	n	a	a	a	a	a	a	n	a	n	n	n	a	a	a	n	n	n	n	n	n	a	n	a	n	a	n	a
Cole, Albert G.	n	n	n	a	a	a	a	a	a	n	a	a	a	n	a	a	a	n	n	n	n	n	n	a	a	a	n	a	n	a
Cole, Orsamus	n	a	n	a	n	a	n	a	a	a	a	a	a	a	a	n	a	n	n	a	n	a	n	n	n	a	---	a	a	a
Colley	n	n	a	a	---	a	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Cotton	---	---	---	---	---	---	a	a	a	a	a	n	a	n	n	a	n	a	n	a	a	a	a	a	n	n	n	a	n	a
Crandall	---	---	---	---	---	a	---	a	---	a	a	n	n	n	---	---	a	a	n	a	n	n	a	n	n	a	a	a	n	a
Davenport	n	n	n	a	a	a	a	a	a	n	a	a	n	n	a	a	a	n	n	n	n	n	n	a	n	a	n	---	n	a
Doran	a	a	a	a	a	a	n	a	a	a	a	a	n	n	---	n	n	a	n	a	a	a	n	a	n	a	a	n	a	n
Dunn	---	---	---	---	---	a	a	a	a	a	a	a	a	a	n	n	a	a	a	n	a	a	a	a	a	a	a	a	n	a
Estabrook	a	a	a	a	a	a	a	a	a	a	n	a	a	a	a	a	a	n	n	a	n	n	n	a	n	a	a	a	n	a
Fagan	a	n	n	a	a	a	a	a	a	a	a	n	a	a	n	a	a	n	a	a	a	n	a	a	a	a	a	a	a	n
Featherstonhaugh	a	n	n	a	a	a	a	a	a	a	a	a	a	a	---	---	a	a	a	n	a	a	a	a	---	a	---	a	n	a
Fenton	n	n	n	a	n	a	a	a	a	a	a	a	a	a	n	n	a	a	a	n	a	a	a	a	a	a	---	a	n	n
Fitzgerald	a	a	n	a	--	a	a	a	a	a	a	n	n	n	a	a	n	a	n	a	a	a	a	a	n	a	---	a	a	n
Folts	n	n	n	a	n	a	a	a	a	n	n	n	n	n	a	a	a	n	n	n	n	n	n	a	n	a	a	a	a	a
Foot	a	n	n	a	n	a	a	---	---	---	---	---	---	---	n	a	a	---	n	a	n	a	a	n	n	a	a	a	a	a
Fowler	n	n	n	a	a	a	a	a	a	a	a	n	n	n	---	a	a	a	n	a	a	a	a	a	a	a	n	a	n	a
Fox	n	a	n	---	---	a	n	---	---	---	---	---	n	n	n	a	a	n	a	---	---	---	n	a	---	---	---	---	---	---
Gale	n	n	n	---	n	a	a	n	n	a	a	a	a	a	a	a	a	a	n	a	a	n	a	a	n	a	a	a	n	a
Gifford	n	n	n	a	a	a	a	a	a	a	a	a	a	n	a	---	a	a	n	a	a	a	n	a	a	n	n	---	a	n
Harrington	n	a	n	a	n	a	a	---	---	n	n	a	a	a	n	a	a	n	n	n	n	n	n	n	n	a	a	a	a	a
Harvey	---	n	n	a	---	a	a	n	n	a	a	a	---	a	a	a	a	a	n	a	n	n	a	n	n	n	a	a	a	a
Hollenbeck	n	n	n	a	---	a	a	a	a	n	n	n	n	n	n	a	a	n	n	n	n	n	n	n	n	a	a	n	---	n
Jackson	a	n	n	a	n	a	a	n	n	n	n	a	a	n	a	a	a	n	n	a	n	n	n	n	n	a	n	a	n	a
Jones	n	a	n	a	n	a	n	a	a	n	n	n	a	a	a	a	a	n	n	n	n	n	n	a	a	a	a	a	a	n
Judd	n	a	n	a	a	a	a	a	a	n	n	a	a	a	a	a	a	n	n	n	n	n	n	a	n	a	a	a	n	a
Kennedy	---	a	n	a	---	a	n	a	a	a	a	n	n	n	a	a	n	a	n	a	a	a	a	a	a	a	a	n	a	n
Kilbourn	a	n	n	a	---	a	a	a	a	a	a	n	n	n	n	a	n	a	a	n	a	a	n	a	n	a	n	n	a	n

NUMBER OF ROLL CALL

MEMBERS	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150
King	a	a	n	a	---	a	a	a	a	a	a	n	n	n	n	a	a	a	n	a	a	a	a	a	a	a	a	n	a	n
Kinne	n	n	n	a	n	a	a	a	a	a	a	a	a	a	a	a	a	n	n	a	n	a	a	n	a	n	n	a	a	a
Lakin	n	a	n	a	n	n	n	n	n	a	a	a	---	---	n	n	a	a	n	a	n	n	n	n	n	n	a	a	a	a
Larkin	a	a	a	a	---	a	a	a	a	n	n	a	a	a	---	a	a	n	n	a	---	n	n	a	a	a	a	a	n	n
Larrabee	a	n	n	a	a	a	a	a	a	n	a	a	a	a	a	a	a	n	n	n	n	n	n	a	n	a	n	a	n	n
Latham	n	n	n	a	n	a	a	n	n	n	a	a	a	a	n	a	a	n	n	n	n	a	n	n	n	n	a	a	a	a
Lewis	a	n	n	a	a	a	a	a	a	a	a	a	a	a	a	a	a	n	n	a	a	n	n	a	a	a	---	---	---	---
Lovell	a	n	n	a	n	---	n	n	n	n	a	a	a	a	a	n	a	n	n	---	n	n	n	n	a	a	n	a	n	a
Lyman	a	n	n	a	---	a	a	a	a	n	n	n	a	a	n	a	a	n	n	n	n	n	n	n	a	n	a	n	a	a
McClellan	n	n	n	a	---	a	a	a	a	a	a	a	a	a	n	a	a	n	n	n	n	n	n	n	a	a	a	n	a	a
McDowell	a	a	n	---	n	a	a	a	a	a	a	n	n	n	a	a	a	a	n	a	a	a	a	a	n	u	---	n	a	n
Martin	n	a	n	a	n	a	n	a	a	n	n	a	a	a	n	n	---	n	a	n	n	n	n	a	a	a	n	a	n	a
Mulford	n	n	a	a	---	a	a	---	---	n	a	a	a	a	a	a	a	n	---	---	---	---	---	---	---	---	n	a	a	---	n	a
Nichols	n	a	n	a	---	a	n	a	a	n	n	n	n	n	n	a	a	n	n	n	n	n	n	a	a	a	n	a	n	a
O'Connor	n	a	n	---	n	---	a	a	a	a	a	a	a	a	n	a	a	n	a	n	n	n	a	a	a	a	a	a	a	a
Pentony	a	a	n	a	---	a	a	a	a	a	a	a	a	a	a	a	a	a	n	a	a	a	n	a	a	a	a	a	n	a
Prentiss	n	n	n	a	a	a	a	a	a	a	a	---	---	---	---	a	a	---	n	n	a	a	a	n	a	n	a	a	---	---	---
Ramsey	n	a	n	a	n	a	a	a	a	a	a	a	n	n	a	n	a	n	u	n	n	n	n	a	n	a	a	a	n	a
Reed	a	a	a	a	---	a	n	a	a	a	a	a	n	n	n	a	a	a	n	n	n	n	n	---	---	a	a	a	n	a	n
Reymert	n	n	n	a	n	a	---	---	---	---	---	---	---	---	---	n	a	a	n	n	n	n	n	n	a	n	a	n	n	a	n
Richardson	a	a	n	a	a	a	n	a	a	a	a	a	a	a	n	n	a	n	n	n	n	n	n	a	n	a	n	a	n	a
Root	n	a	n	a	a	a	a	a	a	a	a	a	a	n	n	a	n	a	n	a	a	a	a	a	a	n	a	a	a	a
Rountree	a	n	n	n	n	a	n	n	n	a	a	n	n	n	n	n	a	n	n	a	n	n	n	n	a	a	---	---	---	---
Sanders	a	n	a	a	a	a	n	a	a	n	n	a	a	a	a	n	a	n	a	n	n	n	n	a	n	a	a	a	n	a
Scagel	n	a	n	a	a	a	a	a	a	n	a	a	a	a	n	a	a	n	n	n	n	n	n	a	a	a	n	a	a	a
Schoeffler	n	n	n	a	a	a	a	---	---	---	---	---	---	---	a	a	a	n	n	n	n	n	n	a	a	a	n	a	a	n
Secor	---	---	---	---	---	a	a	---	---	a	a	a	a	a	n	---	a	n	---	n	a	n	n	a	n	a	n	---	---	---
Stedman	a	n	n	a	n	a	---	a	a	a	a	a	a	a	---	a	a	a	n	a	a	a	a	a	a	a	a	a	a	a
Turner	a	n	n	a	---	a	a	a	a	a	a	a	a	n	a	a	n	a	n	a	a	n	n	a	a	a	n	a	a	n
Vanderpoel	n	a	n	a	n	a	a	a	a	n	a	a	a	a	a	a	a	a	n	n	n	a	n	a	a	a	n	a	a	a
Ward	a	a	n	a	---	---	n	---	--	n	n	a	a	a	a	n	---	---	n	a	n	n	a	a	a	a	a	a	a	n
Warden	--	a	n	n	---	a	a	a	a	a	a	a	a	a	n	a	a	n	a	n	n	n	n	a	a	a	---	---	n	a
Wheeler	n	a	n	a	-	a	a	a	a	n	n	n	n	n	a	a	a	n	a	n	n	n	n	a	n	a	n	a	n	a
Whiton	n	n	n	a	---	a	a	n	n	a	a	a	a	a	a	a	a	a	n	a	n	n	n	n	a	a	a	n	a	n

NUMBER OF ROLL CALL

MEMBERS	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180
Beall	n	a	n	n	n	a	a	a	n	a	a	n	a	n	n	a	n	n	n	n	---	---	a	---	a	---	a	a	n	n
Biggs	---	--	---	---	---	---	---	-	---	---	---	a	a	n	n	n	---	---	---	n	---	---	---	---	n	a	a	n	n	---
Bishop	n	a	n	n	n	a	n	n	a	n	n	a	a	a	a	n	a	n	n	a	a	a	n	a	a	---	a	n	n	n
Brownell	n	a	n	n	n	a	a	a	a	a	a	a	a	n	n	a	a	n	n	n	a	a	---	---	---	---	---	---	n	n
Carter	a	n	n	n	a	a	a	a	n	a	a	a	a	n	n	n	n	n	n	n	n	a	---	---	n	a	a	a	n	a
Case	n	a	n	n	n	a	n	a	n	a	a	a	a	a	a	n	a	n	n	n	n	n	a	n	a	a	a	a	n	n
Castleman	a	n	a	a	n	---	---	---	---	---	---	n	a	n	---	n	a	n	n	a	a	a	a	n	a	a	a	a	a	a
Chase	n	a	n	n	n	a	n	n	---	n	n	n	n	n	n	a	n	n	n	n	n	a	n	n	a	n	a	a	n	n
Cole, Albert G.	a	n	---	---	---	---	n	n	n	n	n	n	a	a	a	n	n	n	n	n	a	a	a	a	a	n	a	a	n	---
Cole, Orsamus	a	n	a	---	---	---	n	n	a	n	n	a	n	a	a	n	a	n	n	n	---	---	a	a	a	a	a	a	a	a
Colley	---	---	---	---	---	---	---	---	---	---	---	a	n	n	n	a	---	n	n	n	---	---	---	n	a	a	a	a	n	n
Cotton	a	n	a	n	n	a	n	n	a	n	n	n	a	a	a	n	n	n	n	n	a	a	n	n	---	---	---	---	---	---
Crandall	n	a	---	---	---	---	---	---	---	---	---	n	n	n	n	n	n	n	n	n	n	a	n	n	a	---	---	a	n	a
Davenport	n	a	---	n	n	a	n	a	a	a	a	n	n	n	n	a	n	n	n	n	n	a	a	a	a	n	a	a	n	n
Doran	n	n-a	a	n	a	n	n	a	n	a	a	n	a	a	a	n	a	n	n	n	a	a	a	n	n	n	a	n	n	a
Dunn	a	---	a	n	n	n	n	n	n	n	n	a	a	a	a	n	n	n	n	n	a	a	a	a	a	n	a	a	n	n
Estabrook	n	a	n	n	n	n	---	---	---	---	---	n	a	a	a	a	a	n	n	n	---	---	n	a	a	a	a	a	n	a
Fagan	n	a	n	n	n	a	a	a	n	a	a	a	a	n	n	n	a	n	n	n	n	n	a	a	a	a	a	a	n	n
Featherstonhaugh	n	a	n	n	n	n	a	a	n	a	a	n	---	---	---	---	n	n	n	n	a	a	a	a	a	n	a	a	n	n
Fenton	a	n	a	n	n	n	n	n	n	n	n	n	a	a	a	n	n	n	n	n	a	a	a	a	a	n	a	a	n	n
Fitzgerald	n	a	n	n	n	n	a	a	n	a	a	a	n	n	n	n	n	n	n	n	n	n	a	n	a	a	a	n	n	n
Folts	n	---	n	n	n	a	n	n	n	n	n	a	a	a	a	a	a	n	n	n	a	a	n	a	a	n	a	a	n	n
Foot	a	n	a	n	n	a	n	n	n	n	n	n	n	n	n	a	a	n	n	n	n	n	n	n	a	a	a	a	a	a
Fowler	---	a	n	n	n	n	n	n	a	n	n	n	a	n	n	---	a	n	---	n	n	n	n	n	a	n	a	a	n	a
Fox	---	---	---	---	---	---	---	---	---	---	---	n	a	a	n	a	n	---	n	n	-	---	a	a	a	n	a	a	a	n
Gale	n	a	n	n	n	a	n	n	n	n	n	a	n	n	n	n	a	n	n	n	n	a	a	a	a	--	n	a	n	---
Gifford	n	a	---	n	---	n	a	a	a	a	a	a	a	a	a	n	n	n	n	n	a	a	n	n	a	---	a	n	n	n
Harrington	n	a	n	n	n	a	---	---	---	---	---	n	a	a	n	n	a	n	n	n	a	a	a	a	a	a	a	a	n	n
Harvey	n	n	a	n	a	a	n	n	n	n	a	a	a	n	n	n	n	n	---	n	---	---	a	a	a	a	a	a	n	n
Hollenbeck	n	a	---	---	---	---	n	n	a	a	n	n	n	n	n	a	a	n	n	n	---	---	a	a	a	a	a	a	n	n
Jackson	a	n	a	n	n	a	n	n	a	n	n	n	n	a	a	a	n	n	n	a	n	a	n	a	---	n	a	a	n	a
Jones	n	a	n	n	n	a	n	n	a	n	n	a	a	a	a	a	a	n	n	a	a	a	a	a	a	a	a	n	n	a
Judd	n	a	n	n	n	n	n	a	a	a	a	n	a	n	n	n	n	n	n	n	a	a	a	n	a	---	a	a	n	n
Kennedy	a	n	---	a	n	n	n	n	a	n	n	n	a	n	n	n	a	a	n	a	a	a	a	a	a	n	a	---	n	---
Kilbourn	a	n	a	n	n	n	n	n	a	n	n	n	a	n	n	a	n	n	a	a	a	a	n	n	a	n	n	n	a	a

NUMBER OF ROLL CALL

MEMBERS	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180
King	a	n	a	n	a	a	n	n	n	n	n	a	a	a	a	a	n	n	n	n	a	a	a	a	a	a	a	a	n	a
Kinne	n	a	n	n	n	a	n	n	n	n	n	n	a	n	n	n	a	n	n	n	---	a	a	a	a	a	a	a	n	a
Lakin	a	n	a	a	a	n	n	n	a	n	n	a	n	n	n	n	a	a	a	n	n	n	n	n	a	a	a	n	a	a
Larkin	n	a	n	n	n	n	n	n	a	n	n	n	a	---	a	n	a	n	n	a	a	a	a	---	a	a	a	n	n	a
Larrabee	n	a	n	a	n	n	n	a	n	a	n	n	n	n	n	a	a	n	a	n	n	a	a	a	a	n	a	a	n	---
Latham	n	a	n	n	n	n	n	n	n	n	n	n	a	a	a	n	n	n	n	n	a	a	a	a	a	n	a	a	n	a
Lewis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	a	a	a	n	a	---	a	n	n	a
Lovell	n	a	a	n	n	n	n	n	a	n	n	a	a	a	a	n	n	n	a	a	a	a	n	a	---	---	---	n	n	---
Lyman	n	a	n	n	n	n	n	n	n	n	n	n	n	n	n	a	a	n	n	n	n	a	a	a	a	n	a	a	n	---
McClellan	a	n	a	n	n	---	---	---	---	---	---	---	a	a	a	n	n	n	n	n	---	---	a	---	---	n	a	a	n	---
McDowell	a	n	a	n	n	n	n	n	n	n	n	n	a	n	n	n	n	n	n	n	---	---	--	--	---	---	---	---	---	---
Martin	n	a	n	n	n	n	n	n	a	n	n	n	a	a	a	n	n	n	a	a	a	a	a	a	a	n	a	a	n	n
Mulford	n	a	n	n	n	n	n	n	a	n	n	n	a	a	a	n	a	n	n	n	a	a	a	---	a	a	a	a	n	n
Nichols	n	a	n	n	a	a	---	---	---	---	---	---	n	n	a	n	a	n	a	n	n	a	a	a	a	a	n	a	n	n	n
O'Connor	a	n	a	n	n	n	n	n	a	n	n	n	a	n	n	n	n	n	n	n	a	a	a	---	a	n	a	a	n	n
Pentony	n	a	n	n	n	a	a	a	n	a	n	a	a	a	n	n	n	a	n	a	n	n	a	a	a	n	a	n	n	n
Prentiss	---	---	a	n	n	n	n	n	n	n	n	n	a	a	a	n	---	---	---	---	---	---	n	a	a	a	a	---	n	n
Ramsey	n	a	n	n	a	a	n	n	a	n	n	a	n	n	n	a	n	n	n	n	n	n	a	a	a	a	a	a	a	a
Reed	a	n	a	n	a	a	a	a	n	a	a	a	a	a	n	n	a	n	a	a	a	a	a	n	n	a	a	--	n	a
Reymert	a	n	a	---	---	a	n	n	a	n	n	n	a	n	n	n	n	n	n	n	a	a	a	---	a	n	a	a	n	a
Richardson	n	a	n	n	n	n	n	n	a	n	a	n	n	n	n	a	n	n	n	n	n	n	a	n	---	a	a	a	n	n
Root	a	n	a	n	n	n	a	a	a	a	a	a	a	a	a	n	a	n	a	a	a	a	a	n	a	a	a	n-a	n	n
Rountree	---	---	n	n	a	n	n	n	a	n	n	a	n	n	n	a	n	n	n	n	n	a	a	a	a	a	a	a	n	a
Sanders	n	a	n	n	n	n	n	n	n	---	n	n	a	n	n	a	n	n	n	n	a	a	n	a	a	n	a	a	n	n
Scagel	n	a	n	n	n	a	n	n	a	a	a	n	a	a	a	n	n	n	n	n	a	a	n	n	a	n	a	a	n	n
Schoeffler	n	a	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Secor	---	---	---	n	n	a	n	a	n	a	a	n	n	n	n	a	---	n	n	n	n	n	---	a	a	---	a	a	n	n
Stedman	n	a	n	n	n	a	n	n	a	n	n	a	n	n	n	a	a	n	n	n	n	n	a	a	---	---	---	a	n	n
Turner	n	a	n	n	n	n	a	n	n	a	a	a	a	a	a	n	a	n	a	a	a	a	a	a	a	a	a	n	n	a
Vanderpoel	n	a	n	n	n	n	n	n	n	n	n	a	a	n	n	a	n	a	a	a	a	a	a	a	a	a	a	n	n	n-a
Ward	n	a	---	n	a	a	:.	a	n	a	a	n	n	n	n	a	---	n	n-a	a	n	a	a	a	a	a	a	n	n	n
Warden	---	---	a	a	n	a	n	n	n	---	a	a	a	n	n	n	---	n	---	n	a	a	---	---	a	a	---	a	n	n
Wheeler	n	a	---	---	---	---	---	---	---	---	---	n	a	a	a	n	n	n	n	n	a	a	n	a	n	n	a	a	a	n
Whiton	a	n	a	a	a	n	n	n	n	n	n	a	n	n	n	n	n	n	n	n	n	n	a	a	n	n	a	a	n	n

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MEMBERS	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211
Beail	n	n	a	a	a	n	a	a	n	n	a	n	---	n	a	n	n	n	n	a	a	n	a	a	---	--	a	---	a	a	n
Biggs	--	---	---	a	a	n	---	a	n	n	a	n	a	n	a	a	a	n	a	n	a	a	n	---	---	---	---	---	---	---	--
Bishop	n	n	n	a	a	n	a	a	n	n	a	n	n	n	n	n	n	a	n	a	a	n	a	a	a	a	n	---	n	a	---
Brownell	n	a	a	a	a	n	a	a	a	n	a	n	a	n	n	a	a	n	n	a	a	a	n	a	a	a	n	a	n	a	n
Carter	a	a	a	a	a	n	a	a	---	a	n	a	a	n	a	n	n	n	n	n	a	n	a	a	---	---	---	a	a	a	a
Case	a	n	a	a	a	n	a	a	a	n	a	a	n	a	n	a	a	a	n	n	a	a	a	a	a	a	n	a	a	a	a
Castleman	n	a	n	a	a	n	a	a	a	a	n	a	a	a	a	a	---	n	a	n	a	a	a	a	a	n	n	n	n	a	---
Chase	n	n	n	n	n	n	a	a	n	n	a	n	n	n	n	a	a	a	n	a	n	n	a	a	a	a	n	n	n	a	n
Cole, Albert G.	---	---	---	a	a	n	a	a	n	n	a	n	a	n	---	a	a	n	n	a	---	---	---	a	n	n	n	a	a	a	n
Cole, Orsamus	n	a	n	a	a	n	a	a	a	a	n	a	n	n	a	n	a	n	a	n	---	n	a	a	a	n	n	a	a	a	a
Colley	n	a	a	a	a	n	a	a	n	n	n	a	n	n	n	n	n	n	n	n	---	a	a	a	a	n	n	a	a	a	n
Cotton	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Crandall	n	n	n	a	a	n	a	a	a	a	n	a	n	n	n	n	n	n	n	a	n	a	a	a	n	n	a	a	a	a	a
Davenport	n	n	a	n	n	n	a	a	n	n	a	n	a	n	n	a	a	a	a	a	n	a	a	a	a	n	a	a	a	a	n
Doran	a	n	n	n	n	n	a	a	a	a	n	a	n	n	n	n	n	n	n	a	a	n	a	a	a	n	n	n	---	a	a
Dunn	n	n	n	n	n	n	a	a	a	n	a	n	a	n	a	n	n	n	n	a	n	n	a	a	n	n	n	n	n	a	a
Estabrook	a	a	n	a	a	n	a	a	a	a	n	a	a	n	a	n	n	n	a	n	---	n	a	a	---	n	n	---	n	a	n
Fagan	a	a	n	a	a	a	a	a	a	a	n	a	a	n	n	n	n	n	a	n	---	n	a	a	a	n	n	n	n	a	n
Featherstonhaugh	n	n	n	n	n	a	a	a	a	n	a	n	a	n	a	n	n	n	n	a	a	n	a	a	---	---	---	---	---	a	a
Fenton	n	n	n	n	n	n	a	a	a	a	a	n	a	n	a	n	n	n	n	a	n	n	a	a	a	n	n	n	n	a	n
Fitzgerald	n	n	a	a	a	a	n	a	a	n	n	a	n	n	a	n	n	n	n	n	a	---	---	a	a	n	n	n	---	a	a
Folts	n	n	a	n	n	n	a	a	n	n	a	n	a	n	n	a	n	a	a	a	n	n	a	a	a	a	n	n	n	a	n
Foot	n	a	n	n	n	n	a	a	a	a	n	a	a	n	n	n	n	n	a	n	a	n	a	a	a	n	n	a	a	a	a
Fowler	n	a	a	n	n	n	---	a	n	n	a	a	n	n	n	a	a	a	n	a	n	n	a	---	a	a	n	n	n	---	n
Fox	a	a	a	n	n	a	n	a	a	a	n	a	n	n	a	n	n	n	a	n	n	n	a	a	a	n	n	n	n	a	n
Gale	n	a	n	a	a	n	a	a	a	a	n	a	n	n	a	n	n	n	a	n	a	a	a	a	a	n	n	a	a	a	a
Gifford	n	n	a	n	n	a	n	a	a	a	a	n	a	n	---	a	a	a	n	a	n	n	a	a	a	a	n	n	n	a	---
Harrington	a	n	a	a	a	n	a	a	n	n	n	n	n	n	n	n	n	n	n	n	a	n	a	a	a	n	n	n	a	a	a
Harvey	---	n	a	a	a	n	a	a	---	---	n	a	n	n	n	a	a	n	n	n	--	a	n	a	n	n	n	a	a	a	a
Hollenbeck	a	n	---	a	a	n	a	a	n	n	a	n	n	n	---	n	n	n	n	a	n	---	---	a	a	a	n	a	a	a	a
Jackson	a	a	a	n	n	n	a	a	n	n	n	a	a	n	n	a	a	n	n	n	n	n	a	a	n	n	n	n	n	a	n
Jones	a	n	a	a	a	a	n	a	a	a	a	n	a	n	n	n	a	a	n	a	n	n	a	a	n	n	n	n	n	a	n
Judd	n	n	n	a	a	n	a	a	n	n	a	n	n	n	a	n	n	n	n	a	a	n	a	a	a	n	a	n	n	a	n
Kennedy	n	n	n	n	n	a	n	a	a	n	n	a	n	n	n	n	n	n	n	n	n	n	a	a	---	n	n	n	n	a	a
Kilbourn	n	a	n	n	n	n	--	n	n	a	n	n	n	a	n	a	n	n	a	n	--	--	---	---	---	---	---	---	---	---	--

NUMBER OF ROLL CALL

MEMBERS	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211
King	n	a	n	a	a	n	a	a	a	n	n	a	n	n	n	a	a	n	n	n	a	a	n	a	a	n	n	a	a	a	a
Kinne	a	a	a	a	a	a	a	a	a	a	n	a	a	a	n	a	a	a	a	n	n	n	a	a	a	n	n	n	---	a	n
Lakin	n	a	n	a	a	n	a	a	a	a	n	a	a	n	n-a	n	a	n	a	n	a	a	n	a	a	n	n	a	a	a	a
Larkin	n	a	n	a	---	a	---	---	a	a	n	a	---	a	---	a	a	a	a	n	a	n	a	a	a	n	n	a	n	a	a
Larrabee	n	n	n	a	n	n	a	a	n	n	a	n	a	n	n	a	n	a	n	a	a	n	a	a	a	a	a	a	a	a	n
Latham	n	a	n	n	n	n	a	a	a	a	n	a	a	n	n	a	a	n	a	n	n	n	a	a	a	n	n	a	a	a	n
Lewis	a	n	a	---	n	a	a	a	a	n	a	a	a	n	n	a	a	a	n	a	n	n	a	a	a	a	n	a	a	a	---
Lovell	a	a	a	n	n	n	a	a	n	n	n	a	a	a	n	a	a	n	n	n	n	n	a	a	n	n	n	n	n	a	a
Lyman	n	n	n	a	a	n	a	a	n	n	a	n	a	n	n	n	n	a	a	a	a	n	a	a	a	a	a	a	n	a	a
McClellan	a	n	a	n	n	a	n	a	n	n	a	n	a	n	n	n	n	n	n	a	n	n	a	a	---	--	n	a	n	a	a
McDowell	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Martin	a	a	a	n	n	a	a	a	a	n	n	a	a	n	n	a	a	a	n	n	n	n	a	a	n	a	n	n	n	a	n
Mulford	n	n	n	a	a	n	a	a	n	n	a	n	a	n	---	n	n	n	n	a	n	n	a	a	---	n	n	a	a	a	n
Nichols	n	n	n	n	n	a	n	a	a	n	a	a	n	n	n	a	n	n	n	n	n	n	a	a	a	n	n	n	n	a	n
O'Connor	n	n	n	n	n	a	a	a	a	a	a	n	n	n	a	n	n	n	n	a	n	n	a	a	a	a	n	---	---	a	n
Pentony	n	n	a	n	n	a	n	a	n	n	a	n	a	n	a	n	n	n	n	a	n	n	---	a	a	a	a	a	a	a	---
Prentiss	n	n	n	a	a	a	a	a	n	n	a	n	a	n	a	n	n	n	n	a	a	---	---	n	n	n	n	a	a	a	a
Ramsey	n	a	n	a	a	a	n	a	a	a	n	a	n	n	a	n	a	n	a	n	a	a	n	a	a	n	n	n	n	a	a
Reed	n	---	---	a	a	n	a	a	a	a	n	a	a	n	a	a	a	n	n	n	---	a	n	a	---	---	n	a	a	a	a
Reymert	n	a	a	n	a	n	a	a	n	n	a	n	a	n	n	n	n	n	n	a	a	n	---	a	a	n	n	a	a	a	n
Richardson	a	n	n	a	a	a	n	a	a	n	n	a	a	n	a	a	n	n	a	n	a	a	n	a	a	n	n	a	a	a	a
Root	n	n	n	n	n	n	a	a	a	n	a	a	a	a	n	a	a	n	a	n	---	n	a	a	a	a	n	a	a	a	n
Rountree	n	a	n	a	a	n	a	a	a	a	n	a	a	n	a	a	a	n	a	n	a	a	n	a	a	n	n	a	a	a	a
Sanders	a	n	a	a	a	n	a	a	n	n	a	n	a	n	n	a	a	n	n	a	a	n	n	a	a	n	n	n	n	---	n
Scagel	a	n	a	n	n	n	a	a	n	n	a	n	n	n	n	a	n	a	n	a	n	n	a	a	n	a	n	n	n	---	n
Schoeffler	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Secor	a	n	a	a	a	a	a	a	n	n	a	n	a	n	n	a	a	a	n	a	n	n	a	a	a	a	n	a	a	a	n
Stedman	a	n	a	a	a	n	a	a	a	a	n	a	a	n	a	a	a	n	a	n	a	n	a	a	a	n	n	a	a	a	a
Turner	a	a	a	a	a	n	a	a	a	a	n	a	a	n	n	n	n	n	a	n	a	---	---	a	---	---	n	a	a	a	n
Vanderpoel	n	n	n	a	a	a	a	a	a	a	n	a	n	a	n	n	a	n	a	n	a	a	n	a	a	a	a	n	n	n	a	n
Ward	n	n	a	---	---	a	a	a	a	a	a	n	a	n	---	n	n	n	n	a	a	n	---	a	a	a	n	a	---	a	---
Warden	n	n	n	a	a	n	a	a	n	n	a	n	n	n	n	n	n	n	n	a	a	n	n	---	a	---	---	---	---	a	n
Wheeler	a	a	a	n	n	a	n	a	a	a	n	a	a	n	n	a	n	n	a	n	---	n	a	a	---	n	n	n	n	a	n
Whiton	--	a	n	n	n	n	a	a	a	a	n	a	n	a	n	a	n	n	a	n	a	n	a	a	n	n	n	a	a	---	a

NUMBER OF ROLL CALL

MEMBERS	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242
Beall	n	n	n	a	a	a	a	n	n	a	n	a	a	n	a	---	n	a	n	n	a	n	n	n	n	n	a	a	a	n	a
Biggs	---	---	---	n	---	a	a	n	n	a	n	a	a	---	a	a	---	---	---	a	n	n	n	a	a	a	---	a	a	n	a
Bishop	n	n	n	a	n	n	n	a	a	n	a	n	a	a	a	---	n	a	a	n	a	a	n	a	n	n	---	a	n	a	a
Brownell	n	---	---	---	a	a	a	n	n	a	n	n	---	---	---	---	---	---	---	---	---	---	---	a	n	n	n	a	a	n	---
Carter	n	n	a	n	a	a	a	n	n	a	n	a	a	n	a	a	a	a	a	n	a	n	a	n	n	n	n	a	a	a	a
Case	n	n	a	a	a	a	a	n	n	a	n	a	a	n	a	a	a	a	a	a	a	n	n	a	n	n	a	a	n	a	a
Castleman	n	n	a	a	a	a	a	a	n	a	n	a	a	n	n	a	a	a	n	n	a	n	n	---	a	a	a	n	a	n	a
Chase	n	n	n	n	a	a	a	n	n	n	n	a	a	n	a	a	a	a	a	n	a	a	a	a	n	n	a	n	n	a	a
Cole, Albert G.	a	n	n	a	a	a	a	n	n	a	n	a	n	a	n	n	a	a	n	a	n	n	n	a	a	a	a	---	a	a	a
Cole, Orsamus	n	n	a	a	a	a	a	n	n	a	n	a	a	a	n	n	a	n	n	n	a	n	n	---	n	n	n	n	a	n	a
Colley	n	n	---	a	a	a	a	n	n	a	n	a	a	---	a	a	a	n	a	n	a	n	---	n	n	n	---	n	a	n	a
Cotton	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Crandall	a	n	a	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	a	n	n	a	n	a	n	a
Davenport	a	---	n	n	a	a	n	n	n	a	n	a	a	a	a	a	a	a	a	a	---	a	a	a	a	a	a	n	n	n	a	a
Doran	n	n	a	n	n	n	n	n	a	a	a	n	a	---	a	n	a	a	n	a	a	n	n	a	a	n	a	n	a	a	a
Dunn	n	n	n	n	a	a	n	n	n	a	n	a	a	n	a	a	a	a	a	n	n	n	n	a	n	n	a	a	a	a	a
Estabrook	n	n	n	a	a	n	n	n	a	n	a	n	n	n	a	a	n	a	a	a	n	n	n	a	n	a	a	---	---	a	a
Fagan	n	n	n	a	a	a	n	n	n	n	n	a	a	---	a	a	a	a	a	n	a	---	---	n	n	n	a	a	n	a	---
Featherstonhaugh	---	n	n	---	n	a	n	n	a	n	n	a	a	n	a	a	a	a	a	a	n	n	n	a	n	n	a	a	n	n	a
Fenton	---	n	n	a	n	---	n	n	a	n	---	---	a	n	a	a	n	a	a	n	a	n	n	a	a	---	n	a	---	a	a
Fitzgerald	n	n	n	n	a	a	n	n	n	a	n	a	a	n	a	a	a	a	n	n	a	n	n	n	n	n	---	a	a	a	a
Folts	n	n	n	a	a	n	n	n	a	n	a	n	a	n	a	a	n	a	a	n	a	a	n	a	a	a	n	n	a	a	a
Foot	n	n	a	a	a	a	a	n	n	a	n	a	a	---	a	a	a	n	n	n	a	n	n	a	n	---	n	n	a	n	a
Fowler	n	n	n	n	a	---	a	n	n	n	n	a	a	n	a	a	---	---	---	n	a	---	---	n	---	n	---	a	---	a	a
Fox	n	n	n	n	a	n	n	n	n	n	a	n	a	a	n	a	n	a	n	n	n	n	n	n	n	n	a	---	---	a	a
Gale	---	n	a	n	a	a	a	n	n	a	n	a	a	n	a	a	a	n	n	n	n	n	n	n	n	n	a	---	---	a	a
Gifford	n	a	n	---	---	n	n	n	a	n	a	n	a	n	n	a	a	a	a	n	a	a	---	---	---	---	---	---	---	n	a
Harrington	n	n	n	n	n	n	n	n	a	n	n	a	a	n	a	a	n	a	n	n	a	n	a	a	a	n	n	a	a	a	---
Harvey	n	n	a	a	a	a	a	n	n	a	n	a	---	---	a	n	a	a	n	a	a	n	n	a	n	n	a	a	---	n	a
Hollenbeck	n	n	a	---	a	a	a	n	n	a	n	a	a	n	a	a	a	a	n	n	a	n	n	n	n	n	n	a	a	n	a
Jackson	n	a	n	n	n	n	n	a	a	n	n	n	a	a	a	a	a	a	n	a	n	a	---	a	n	a	n	n	a	a	a
Jones	n	n	n	n	a	a	a	a	a	n	n	a	a	n	a	a	n	a	a	a	n	---	n	a	a	a	n	n	a	a	a
Judd	n	a	n	a	a	a	a	n	n	a	n	a	a	n	a	---	n	a	a	n	a	n	n	n	n	n	a	a	a	n	a
Kennedy	n	n	a	---	---	a	---	---	---	---	n	n	---	---	a	a	a	a	a	---	---	---	---	n	a	n	a	a	---	---	n	a
Kilbourn	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	n	---

NUMBER OF ROLL CALL

MEMBERS	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242
King	n	n	a	a	a	a	n	n	n	a	n	a	a	a	a	a	a	a	a	n	a	n	n	a	n	n	n	a	a	a	a
Kinne	---	a	n	a	a	a	n	n	n	a	n	a	a	n	a	a	n	n	a	n	a	n	n	n	n	n	n	a	n	a	a
Lakin	n	n	a	a	---	a	a	n	n	n	n	n	n	a	n	n	a	n	n	n	n	n	n	a	n	n	n	n	a	n	a
Larkin	n	n	---	a	n	n	n	a	a	n	n	n	a	---	a	a	a	---	a	n	n	n	n	a	n	a	a	a	n	a	a
Larrabee	n	n	n	a	n	a	n	n	n	a	n	a	a	n	a	a	n	a	a	n	a	a	n	n	n	n	a	a	n	---	a
Latham	n	n	n	n	n	a	n	a	a	a	n	n	a	n	a	a	a	a	a	n	a	n	a	n	n	n	n	a	n	a	a
Lewis	n	n	n	n	n	n	n	n	a	n	a	n	a	---	a	a	a	a	a	n	a	a	n	n	a	a	a	a	n	a	a
Lovell	n	a	n	a	n	n	n	a	a	---	n	n	a	a	a	a	a	a	a	n	n	a	a	a	a	a	n	a	a	a	a
Lyman	n	n	a	a	a	a	a	n	n	a	n	a	a	n	a	a	n	a	a	n	a	n	n	n	n	n	n	a	n	n	a
McClellan	n	n	n	a	n	a	n	a	a	a	n	a	a	a	n	a	n	a	a	a	n	---	n	a	a	a	a	---	---	a	a
McDowell	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Martin	n	a	n	n	a	a	n	a	a	n	a	n	a	---	a	n	a	a	a	a	n	n	a	a	a	a	a	a	a	a	a
Mulford	n	n	n	a	a	a	n	a	a	n	n	n	---	n	a	a	a	a	a	a	n	n	n	a	a	---	a	---	n	a	a
Nichols	n	n	n	n	a	---	---	---	a	n	n	---	a	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
O'Connor	---	n	n	n	a	a	n	a	a	a	n	a	a	---	a	a	a	a	a	n	a	a	n	a	n	n	a	a	---	a	a
Pentony	n	a	n	n	n	n	n	n	a	n	a	n	a	a	a	a	a	a	n	a	a	a	n	n	n	a	a	n	a	---	
Prentiss	n	n	n	a	a	n	n	n	n	n	n	n	---	---	a	a	n	a	a	a	n	a	n	a	a	a	a	a	---	a	a
Ramsey	n	n	a	a	a	a	a	n	n	a	n	a	a	n	a	n	a	a	n	n	a	n	a	n	n	n	---	n	a	n	a
Reed	n	n	a	n	a	a	n	a	a	a	---	a	a	---	n	n	a	a	n	a	n	n	a	a	a	a	n	a	n	---	a
Reymert	n	n	n	a	a	a	n	n	n	n	n	a	a	n	a	a	---	---	a	a	n	n	a	a	a	a	a	---	a	---	a
Richardson	---	n	a	a	a	a	a	n	n	a	n	a	a	---	n	n	a	n	n	n	a	n	n	n	n	n	n	n	a	n	a
Root	n	n	a	n	a	a	n	a	a	n	a	n	a	a	a	a	a	a	a	n	a	n	n	a	n	n	a	a	a	a	a
Rountree	n	n	a	n	a	a	a	n	n	a	n	n	a	---	n	n	a	a	a	n	a	n	n	a	n	n	n	n	a	n	a
Sanders	n	---	n	n	a	a	---	n	n	a	n	a	a	n	a	n	n	a	n	a	n	n	a	a	a	a	---	a	a	n	a
Scagel	n	a	n	n	n	a	a	a	a	a	n	a	a	n	a	a	a	a	a	a	a	n	a	a	n	a	a	n	n	a	---
Schoeffler	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	a
Secor	n	n	n	n	a	a	a	n	n	a	n	a	a	n	a	---	n	a	a	n	---	n	---	a	n	a	n	a	a	a	a
Stedman	n	n	a	a	a	a	a	n	n	a	n	a	a	n	a	a	a	a	a	n	a	n	n	n	n	n	n	n	a	n	a
Turner	a	n	a	n	n	n	n	a	a	n	n	n	a	a	a	a	a	a	a	n	a	n	n	n	n	n	a	a	n	a	a
Vanderpoel	n	n	n	n	a	a	n	n	n	n	n	a	a	a	a	a	n	a	a	n	a	a	n	a	a	n	n	a	n	a	a
Ward	n	n	a	a	a	---	a	n	n	a	n	a	a	--	a	n	a	a	a	n	n	n	a	a	n	---	n	---	---	n	a
Warden	---	---	---	---	a	a	a	a	n	n	a	n	a	---	---	n	a	n	---	a	n	a	n	---	a	n	n	n	---	---	n	a
Wheeler	n	n	n	n	n	n	n	n	n	a	n	a	n	---	---	---	---	a	a	a	a	n	n	a	a	n	a	a	---	a	a	a
Whiton	n	n	a	a	a	a	a	n	n	a	n	a	a	n	a	a	a	a	a	---	a	n	a	a	n	a	a	a	a	n	a

APPENDIX II

BIOGRAPHICAL SKETCHES OF MEMBERS OF CONVENTION OF 1847-1848

BROWN COUNTY

MORGAN LEWIS MARTIN wrote of the convention, "It was composed of a large majority of conservative men and my task was far from difficult." Nevertheless Wisconsin is indebted to him for his able conduct as president of this convention. Martin came to Wisconsin in 1827 while it was still a part of Michigan Territory; he aided in every step of its growth from a small fur-trading, French-Canadian community to a great American commonwealth. He was born March 31, 1805 at Martinsburgh, New York, son of General Walter Martin. In 1824 he graduated from Union College and began the study of law. Two years later he removed to Detroit, where he was admitted to the bar and whence the next spring he came to Green Bay and began practice. Martin was a member from 1831 to 1835 of the legislative council of Michigan. He early saw the promise of the region west of Lake Michigan and began to prepare for territorial government. After its establishment he was a member of the Wisconsin territorial council from 1838 to 1844. In September, 1845 he was elected territorial delegate to Congress and aided in the passage of the enabling act for Wisconsin. As president of the second constitutional convention he appointed all the committees, and he also took an important part in the debates. After the state was formed Martin devoted a large share of his attention to the Fox-Wisconsin Improvement work, for which in 1846 he had obtained a land grant from Congress. In 1866 the company established to conduct this work went into liquidation, carrying away much of Martin's personal fortune. He continued during all these years to render political service to the state and nation. In 1855 and again in 1874 he was a member of the assembly and in 1858 a state senator. During the Civil War he was paymaster with the rank of major; in 1866 he was chosen Indian agent for a term of three years; from 1875 to his death he was judge of Brown County. Judge Martin throughout life belonged to the Democratic party. He was, however, never narrowly partisan, and his integrity and probity were never questioned. He was a warm friend of the Wisconsin Historical Society and furnished for its collections many valuable reminiscences; a notable paper is in *Wisconsin Historical Collections*, xi, 385-415. His manuscripts, presented to the Society by his descendants, are an important source for Wisconsin history. He died December 10, 1887, after a life of well-spent service. *Wis. Hist. Colls.*, xi, 380-384; *Manuscript record.*

CALUMET COUNTY

GEORGE WILLIAM FEATHERSTONHAUGH JR. was the son of a well-known English geologist, who came to the United States to make geological surveys in the West. The son was born in Albany, New York, about 1814; at the age of six he was sent to England for his education; he later attended West Point. He is said to have been at one time connected with the British legation at Washington. About the year 1839 he came to Wisconsin, where his father had made large land purchases in Calumet County. The younger Featherstonhaugh resided for a time at Fond du Lac, then built a palatial stone house on the eastern shore of Lake Winnebago. There he lived the life of a country gentleman and, when in Madison, was a man of elegance and dignity, highly respected by his colleagues. He usually voted with the Whigs of the convention. Featherstonhaugh was an early member of the State Historical Society and one of its first vice-presidents; he was also elected to the last territorial legislature. Soon thereafter he lost his property and removed to Milwaukee, where he lived precariously for many years, a literary hack, newspaper contributor, and a Bohemian. Colonel Featherstonhaugh was well known in the metropolis where his literary abilities found recognition. He was extremely eccentric in appearance and manner, and in spite of a fine education and early advantages he dissipated his powers. In his old age he went to live with relatives in Illinois, where he received a remittance from English sources. He died June 10, 1900, at Gurnee, Illinois. *Manuscript and newspaper records.*

COLUMBIA COUNTY

JAMES TAYLOR LEWIS, the ninth governor of Wisconsin, was a native of New York, where at Clarendon, Orleans County, he was born October 30, 1819, son of Shubael and Eleanor Robertson Lewis. Young Lewis was well educated; he attended Clarkson Academy and Clinton Seminary in western New York. He himself desired a collegiate course but was dissuaded by his father, who persuaded him to study law with Governor Selden at Clarkson. In 1840 Lewis visited the western states and was much pleased with conditions in Wisconsin. Five years later, after being admitted to the bar, he bought land at Columbus, and thereafter made it his home. He was in Madison when Portage County was separated from the present Columbia, and it was he who suggested the latter name for the remaining portion. Lewis in his new Wisconsin home was at once pressed into public service; he was chosen probate judge, district attorney, and court commissioner. In the convention, to which he was elected on the Democratic ticket, he was one of the youngest delegates; nevertheless he was appointed a member of the important committee on schedule and miscellaneous provisions, and spoke occasionally on the floor of the convention. He was elected in 1852 to the state assembly, the next year to the senate, and the same season was nominated for lieutenant governor on the Democratic ticket, which carried the state. During his term as lieutenant governor partisan politics were conducted with great bitterness; and several members of the administration were accused of graft and dishonesty. No such taint fell upon the lieutenant governor; he declined, however, being a candidate for a second

term and retired to private practice. Upon the commencement of the Civil War Lewis announced his full support of the federal government, and in 1861 received both the Republican and the Union party nominations for secretary of state. He was elected to this office by a large majority, having a unanimous vote in his home town. His office was so well conducted that he was elected in 1863 to the governorship, the last of the war governors of Wisconsin (1864-1866). During his term the war was won after great exertions for men and money on the part of the Northern states. In these efforts Governor Lewis coöperated with the federal authorities, while at the same time he introduced measures of wise economy in local affairs. He was instrumental in establishing homes for soldiers' orphans and in proposing measures of reconstruction after the dismissal of the troops. He refused a renomination for the governorship and retired to his home, where he lived until August 4, 1904. Governor Lewis was active in founding the Wisconsin Historical Society and always gave it his support. He was a vice-president for several years and a donor to the Society's collections. *Civil War Messages and Proclamations of Wisconsin's War Governors* (Historical Commission, Madison, 1912), 199-200.

CRAWFORD AND CHIPPEWA COUNTIES

Daniel G. Fenton was originally from New Jersey, where at Trenton in January, 1812 he was born of Quaker parentage. He was educated in Pennsylvania and at the age of twenty-one was admitted to the bar. In 1836 he came to Wisconsin to practice his profession, first settling at Mineral Point, and then about 1840 removing to Prairie du Chien, where he was clerk of the court for nine years. In the convention he acted as an independent, belonging to neither of the two dominant parties. He had a clear grasp of constitutional requirements and aided materially the committee on the executive, legislative, and administrative provisions. In 1848 Fenton represented his district in the first state senate. The succeeding year he was chosen judge of the probate court for Crawford County and served until his untimely death at Prairie du Chien, August 11, 1851. *Manuscript record.*

DANE COUNTY

William Herrimon Fox was born in Westmeath County, Ireland, September 14, 1814, the son of the Reverend William and Eleanor Lynn Fox. The younger William was educated by private tutors and in select schools until in 1833 the family removed to America, settling first in northern Ohio. There the subject of this sketch continued his education, graduating in 1838 from Willoughby University and the next year taking his degree as doctor of medicine. The same year he began practice at Lima, Indiana, whence in 1842 Dr. Fox removed to Dane County and bought government land in what is now the town of Fitchburg. From this home, Dr. Fox practiced medicine throughout southern Dane County. He was also chosen treasurer of the defunct town of Rome and held several other local offices. In 1847 he was elected as a Democrat to the second constitutional convention; in that body he served on the committee on general provisions, including boundaries, suffrage, internal

improvements, etc. The suffrage provision of our state constitution is said to have been prepared by him. Dr. Fox passed the remainder of his life on his farm in Dane County. He was much interested in the development of agriculture and promoted its interests in his neighborhood; but his time was chiefly given to the practice of his profession, in which he achieved a creditable reputation. His home was a hospitable one, and his practice enabled him to aid many people in want of help. Generous and kindly, he was universally beloved throughout Dane County, and on his death, October 20, 1883, all the community mourned. *Manuscript record.*

CHARLES M. NICHOLS was born in 1800 in Albany, New York. When a young man he lived in Chenango County, whence in 1845 he removed to Wisconsin Territory and settled at Cottage Grove. Having been liberally educated, he was employed as a teacher. He was popular with the farmers of his vicinity, and it was their vote which elected him to the convention. Early in the fifties Nichols accompanied his sons to Onalaska, La Crosse County, where they had a lumbering establishment. In 1854-1855 he was county superintendent of schools and in 1869 chairman of the board of supervisors. He died during his incumbency of the latter office. In the convention Mr. Nichols was not on any of the standing committees; he voted, however, with the Democrats. *Manuscript and printed records.*

WILLIAM A. WHEELER was born October 3, 1814 in Fairfield County, Connecticut. He was educated in the common schools, attending also for a time a select school. His taste for mechanics was strongly marked and he became an expert mechanician and millwright. While young he went to Rochester, New York, and later to Erie County of the same state to build and operate mills. In 1837 Wheeler came to Wisconsin Territory and in the early autumn made his way to Madison, where work on the first capitol was just beginning. He built a steam sawmill on Lake Mendota, at which most of the lumber for the capitol was prepared. Thereafter Wheeler made Madison and its environs his permanent home. At the first election in 1839 he was chosen assessor; in 1847 he was county commissioner and the same year a member of the territorial legislature. Probably because of this office he was nominated and elected to the constitutional convention as a Democrat; he was known as a useful, quiet member of that body. In 1854 Wheeler was county treasurer. During the war he raised a local militia company known as the "Harvey Guards," and in 1863 was appointed captain in the commissary service and was stationed at Cumberland Gap when Lee's army surrendered. He was brevetted major and mustered out August 10, 1865. Major Wheeler then returned to his home in Wisconsin. His later years were spent chiefly at Middleton, where he died May 4, 1881. *Manuscript and printed records.*

DODGE COUNTY

STODDARD JUDD was a member of the first constitutional convention. For his biographical sketch, see *Wis. Hist. Colls.*, xxvii (Constitutional Series, ii), 780.

CHARLES HATHAWAY LARRABEE was one of the most versatile and brilliant men in the constitutional convention. He led an active life, full of vicissitude and energy, and served both the nation and the state with ability and efficiency. He was a native of New York, having been born at Rome, November 9, 1820. His father was an officer in the regular army, and a veteran of the War of 1812. When the younger Larrabee was five years old, his father resigned from the army and went to live in Ohio. There Charles was educated at Springfield Academy and Granville University. At the latter institution he met Lyman C. Draper, and the two became lifelong friends. After graduation young Larrabee began the study of law at Springfield; his health failing, he and Draper went in 1841 to Pontotoc, Mississippi, built a cabin, and lived upon the land. There Larrabee completed his legal studies, and was admitted to the bar. Both the young men soon left Mississippi to meet again several years later in Wisconsin. Meanwhile Larrabee sojourned for a time at Chicago, where he did editorial work on the *Democratic Advocate*, and in 1844 was elected city attorney. In March, 1847 Larrabee settled in Wisconsin, founding the village of Horicon in Dodge County. He received the unanimous vote of his town for delegate to the constitutional convention, in which he was one of the youngest members. None the less he was prominent in the debate, serving on the committee on general provisions, advocating homestead exemption, and opposing a state debt for internal improvements. Larrabee's abilities were quickly recognized, and in July, 1848 he was elected judge of the third circuit, a position he held for ten years. His legal acumen was appreciated and his fairness and love of justice made him a popular judge. In 1852 he was candidate for chief justice but failed of election. In 1853 he persuaded the members of the State Historical Society, in which he took a warm interest and which he was largely instrumental in founding, to invite his friend Draper to become its secretary. In 1858 Judge Larrabee was elected to Congress, but failed of reëlection two years later because he was a Douglas Democrat. The day after the firing upon Sumter, however, he offered his services to the government. He enlisted as a private in the Horicon Guards, was soon elected lieutenant by his comrades, and within a few days was commissioned by the governor, major of the Fifth Wisconsin. Major Larrabee served through the Peninsular campaign; August 22, 1862 he was commissioned colonel of the Twenty-fourth Wisconsin, a regiment he did much to raise. After service in the western army, Colonel Larrabee was forced by ill health to resign on August 27, 1863. The next year he sought California in search of relief. He lived for a time at San Jose, then tried the climate at Portland, Oregon. For several years Colonel Larrabee was domiciled at Seattle; from there he went in 1878 as one of the sixteen members who met at Walla Walla to prepare a constitution for Washington; Congress, however, at this time refused to admit Washington as a state into the Union. Colonel Larrabee was for a time regent of the University of Washington. He finally returned to California where in a railway accident near San Bernadino he was killed January 20, 1883. *Wis. Hist. Colls.*, ix, 366-388.

SAMUEL WATSON LYMAN was one of the older members of the convention, having been born November 13, 1797 at Hockanum, Massachusetts. He served in the War of 1812 and later was a major of Massachusetts militia.

Major Lyman migrated in 1845 to Wisconsin and the following year made his home at Hustisford, Dodge County. There as a Democrat he was chosen to several local offices and to the constitutional convention, in whose work he had an inconspicuous share. After the sessions of the convention, failing health made him decline all public service. He died May 27, 1856. *Manuscript record.*

FOND DU LAC COUNTY

SAMUEL WOOTTEN BEALL served in the first convention as a member for Marquette County. In the second convention he represented Taycheedah. For his biography, see *Wis. Hist. Colls.*, xxvii (Constitutional Series, ii), 759-760.

WARREN CHASE, founder of the Ceresco coöperative community at Ripon, was a member of the first constitutional convention. For his biography, see *Wis. Hist. Colls.*, xxvii (Constitutional Series, ii), 765-766.

GRANT COUNTY

ORSAMUS COLE. The Cole family was originally from Rhode Island, where the grandfather of Orsamus served in the Revolution; his maternal grandfather was also a patriot soldier. His father, Hymeneus Cole, early in the nineteenth century removed to New York; and at Cazenovia on August 23, 1819 the subject of this sketch was born. He was brought up on a farm, studied in the common schools of Oswego County, in Clinton County Institute, and in Black River academy. He finished his academic work at Union College, where he graduated in 1843. He then studied law at Belleville, New York, and after admission to the bar in 1845 he started for the West, and spent a few months in Chicago. Then in the autumn of the same year he removed to Potosi, Grant County, Wisconsin, where he entered into a law partnership with William R. Biddlecome. The junior partner of this firm was chosen on the Whig ticket to the second constitutional convention. Although one of its youngest members, Cole had much influence in framing the constitution he was later to interpret. Soon after the convention closed he was nominated, without his knowledge, Whig candidate for Congress in the second district, was elected over the Democratic and Free-Soil candidates, and took his seat in the Congress that passed the Fugitive Slave Law. It is said that Zachary Taylor, Whig president, remarked to Congressman Cole, "Were I from your section, I would vote for the Wilmot Proviso." Cole during his congressional career voted consistently with the antislavery party. In 1850 he was renominated for Congress but was defeated by Ben C. Eastman. In 1853 Cole was Whig candidate upon the state ticket for attorney-general, when he was again defeated. Meanwhile the Republican party was organized, and in 1855 Orsamus Cole was nominated as its candidate for the state supreme court and triumphantly elected. He served upon the bench for thirty-seven years, being chief justice from 1880 until his voluntary retirement in 1892. Judge Cole was a clear thinker and a strong upholder of popular sovereignty. Upon the bench he was weighty and careful rather than brilliant; but his opinions were well reasoned and for the most part stand the test of time. After his retirement he lived in

Milwaukee with an only son, at whose home he died May 5, 1903. John B. Winslow, *The Story of a Great Court*, 82-85.

GEORGE W. LAKIN was born in Cumberland County, Maine, March 29, 1817. Until he was thirteen he lived upon a farm and went to district schools; in his fourteenth year he attended Bridgton Academy; the next year (1832) he entered Wesleyan Seminary at Readfield. There young Lakin remained for five years, teaching school during vacations to eke out his income. At one time he taught in Livermore and lived with the family of Israel Washburn. At Readfield Lakin pursued a classical course and took high rank. In the spring of 1838 he began reading law at Readfield Center; in August he went to Phillips to enter the office of Mr. Sherburne. Eager to see more of the country, young Lakin came West in the autumn of 1839 and entered the law office of John Scott, a famous advocate at Ste. Genevieve, Missouri. There he remained until in June, 1841 he was admitted to the bar at the circuit court of Perry County. A letter from E. B. Washburne, then of Galena, turned the young lawyer's attention to Wisconsin; in October, 1841 he came from Missouri and settled at Platteville, Grant County, where he soon acquired a reputation and a good practice. The first political office to which he was chosen was that of delegate to the second constitutional convention, where he came as a Whig with strong Whig principles. He was a member of the committee on banks and corporations; his opinions on the judiciary likewise had weight. Lakin, although but thirty-one at the time of the convention, was listened to by his colleagues with attention; his highly cultivated, quiet manner, rich voice, and deliberation added weight to his words. The year the convention closed its sessions Lakin was elected to the senate of the new state (1849-1851); upon the election of Zachary Taylor in 1849 he was appointed United States district attorney for Wisconsin and was recommissioned in 1850 for four years. At the expiration of his term of office he removed to Milwaukee and continued practice, later taking his son Charles into partnership. At his death, September 13, 1884, Lakin was one of the honored members of the bar of the metropolis. *Manuscript record.*

ALEXANDER DINWIDDIE RAMSEY, a descendant of well-known Virginians, was born November 28, 1803 in Kentucky. When a young man of twenty-two he was attracted to the lead mines, where he made his first home at Dubuque, whence two years later he removed across the river to the neighborhood of Cassville. There Ramsey joined the settlement of Orris McCartney, who afterwards became his brother-in-law. Ramsey was in the Winnebago War of 1827 and the Black Hawk War of 1832. In his house were held the first church service and the first school in the Cassville region. He lived on his home farm for over fifty years. In the convention, to which he was elected as a Whig, he made no speeches, but gave his associates the benefit of his judgment in public affairs. He died July 17, 1878, soon after the thirtieth reunion of his constitutional convention associates. *Manuscript record.*

WILLIAM RICHARDSON came to the convention from the extreme southwestern corner of Wisconsin, representing Jamestown as a Whig. He was born April 20, 1807 at Circleville, Ohio, grew up on a farm, and in 1838 came to

Wisconsin, where he became a farmer at Fairplay. He represented his district in the assembly of 1852, wherein he was appointed commissioner on the Fox-Wisconsin Improvement enterprise. Shortly after this he left Grant County, residing for a time at Madison. About 1862 Richardson removed to Oil City in Ontario, Canada, and there spent over twelve years. In 1875 he took his family to Niles, Michigan, and there December 14 of the same year he died. Although he took no conspicuous part in the constitutional convention, he was respected by his neighbors for his sterling qualities and good judgment. *Manuscript record.*

JOHN HAWKINS ROUNTREE was a pioneer of the pioneers. His ancestors came from Ireland to Virginia early in the eighteenth century. Late in the same century his father John removed to Warren County, Kentucky, near Mammoth Cave, where John Hawkins was born March 24, 1805. He grew up in Kentucky with a meager education, but showing much native ability. In 1824 he removed to Hillsboro, Illinois, whither his brother Hiram had preceded him. There John Rountree was soon appointed deputy sheriff and upon his majority in 1826, sheriff of the county. Governor Coles likewise commissioned him major of militia; from this office he was called Major Rountree during all his life. In 1827 the young man first came to the lead mines of Wisconsin's southern border. After the Winnebago disturbance of that summer had subsided Major Rountree purchased a claim on the site of Platteville and began mining. For the first few months he and his men lived in tents; by August, 1828 he had built a log cabin, to which he brought his bride, Grace Mitchell, from Galena. Major Rountree was one of Wisconsin's earliest smelters and furnace builders; his business prospered greatly. In 1829 he was first postmaster for Platteville; in 1830 was appointed justice of the peace. During the Black Hawk War he raised a company and took active part in the defense of the lead regions. When Wisconsin Territory was organized Major Rountree was elected to the legislative council, wherein he served for eight years; he was likewise probate judge of Grant County and in 1839 colonel of militia. He was elected to the constitutional convention as a Whig and served on the committee on general provisions. Upon the organization of the state he was chosen regent of the University (1848-1851); was in the senate in 1850-1851 and 1866-1867, and in the assembly in 1863. In 1853 he was appointed major general of militia. About 1852 Major Rountree left the Whig party and became a Free-Soil Democrat; in 1861 he adhered to the Union and soon became a Republican. He was a patron of education and a founder of Platteville Normal School. As one of the early members of the Historical Society and for years a vice-president, he took great interest in its growth. In 1857 Major Rountree was one of the first trustees of the Northwestern Mutual Life Insurance Company and remained so until his death. He lived in his Platteville home to the ripe age of eighty-five years, passing away June 27, 1890. He maintained an active interest in the Methodist Episcopal Church, of which his brothers-in-law were pioneer ministers. In all matters of progress and uplift for the community Major Rountree's influence was potent; he was held in high esteem by the entire state, and recognized as a citizen of great worth and probity. *Manuscript and printed records.*

GREEN COUNTY

JAMES BIGGS belonged to a well-known family of western pioneers. Originally from Maryland, they removed about 1770 over the Alleghenies and finally settled on the waters of Short Creek above Wheeling, in West Virginia. One of James Bigg's uncles was killed in 1782 in Crawford's defeat; another, an officer in the Revolution, was at one time in command of Fort Henry at Wheeling. James's father, Zaccheus Biggs, migrated after the Treaty of Greenville (1795) to the Northwest Territory; there, near Chillicothe, Ohio, James was born November 16, 1799. His mother died when the boy was six years old; and soon thereafter the family went to live in Cincinnati. James was educated in that city and at Washington College, Pennsylvania. He came to Wisconsin in December, 1829, having secured a contract for surveying land. His surveys were in townships three to six, ranges four to nine east in the present Green and Lafayette counties. While surveying Biggs made his headquarters at Colonel William S. Hamilton's place at Wiota, where he was one of the defenders of a block fort during the Black Hawk War. The next year he staked out diggings in township three, range six, which became his future home; in the fall of 1833 he returned to Ohio and the next spring brought his family to Wisconsin; he was then the first permanent settler in Adams Township, Green County. He held several local offices; at one time he was county superintendent of schools, the local school being held in his own home. He was also officer in the local militia, and was usually addressed as General Biggs. When a post office was established in his town, called Walnut Springs, he was appointed postmaster and held the office twenty-three years; the post office at this place is now discontinued. General Biggs was elected to the second constitutional convention from Green County on the Whig ticket. Because of ill health he had an inconspicuous part in the proceedings. He never held another political office, but lived on his home farm until his death June 27, 1870. *Manuscript record.*

WILLIAM MCDOWELL, son of William and Rachel McClintock McDowell, was born at Newtown (now Stephens City), Frederick County, Virginia, March 27, 1805. When the boy was two years of age the family removed to Chillicothe, Ohio, where the father became a merchant and farmer. Young McDowell received an academic education and in his eighteenth year began the study of medicine at Portsmouth, Ohio. He did not, however, persevere in this profession, having been by turns farmer, lumber dealer, manufacturer, and merchant. In 1842 McDowell brought his family by steamboat on the Ohio and Mississippi rivers to northern Illinois, whither his wife's family had preceded him. He then bought land in Clarno, Green County, Wisconsin Territory, where he made his permanent home. McDowell was an intelligent, well-read man of emphatic opinions. He held many local offices on school and town boards and during the Civil War was county treasurer. He was elected to the convention as a Whig and served on the committee on general provisions. Later he became a Republican, and in 1884 a Greenbacker. He lived to a great age, the latter years of which were passed in Monroe, where he died April 17, 1895. *Manuscript and printed records.*

IOWA AND RICHLAND COUNTIES

CHARLES BISHOP was born near Walton, Delaware County, New York, June 14, 1819. When about fourteen he removed with his father's family to a farm near Norwalk, Ohio. From there he went to Western Reserve College and after graduation in the same class with President Hayes he entered Harvard Law School, completing his course in 1845. Soon thereafter Bishop came to Wisconsin and began the practice of law at Mineral Point. He was elected from Iowa County to the second constitutional convention as a Democrat, and served on the standing committee on banks and banking. About 1850 Bishop returned to Ohio and entered at Norwalk the law firm of Latimer and Bishop; his residence was, however, at Bowling Green in Wood County. In 1882 he retired from active practice and thereafter made his home in Cortland, New York, where after many years of quiet life, occupied with travel, reading, and family interests, he passed away July 8, 1893. *Manuscript record.*

STEPHEN P. HOLLENBECK, son of Abram and Abigail Bronson Hollenbeck, was born March 28, 1801 at Richmond, Chittenden County, Vermont. He was brought up on a farm and learned the trade of millwright. In 1834 he removed from Highgate, Franklin County, Vermont, to Mineral Point, Wisconsin, and made his residence in Iowa County until 1863. As a member of the local militia Hollenbeck was sent in 1840 to Richland County to aid in the removal of nearly a hundred recalcitrant Winnebago Indians, when he succeeded in persuading them to surrender, and delivered over the redmen to a captain of the regular army. For this hazardous service Governor Dodge had a special remuneration voted to Hollenbeck. He held several local offices and in 1855 represented Highland in the state assembly. He was one of the Whigs elected to the convention from southwest Wisconsin, defeating for that office the Democratic candidate, Francis Dunn, brother of Judge Dunn. In the convention Hollenbeck was a quiet, hard-working member. After the Civil War he removed to Green Lake County, whence during the latter years of his life he went to Concord, Dodge County, Minnesota, to make his home with his daughter; there he died March 26, 1895, two days before his ninety-fourth birthday. *Manuscript record.*

JOSEPH WARD was born January 24, 1803 at Amsterdam, Montgomery County, New York. At twenty years of age he came to Detroit, Michigan, then a pioneer settlement, and five years later removed to Milwaukee, where he was a prominent merchant. In 1845 he went to live at Dodgeville, where he married a widowed daughter of Governor Dodge. Ward was elected to the convention from Iowa County and served on the committee on schedule and miscellaneous provisions. He was widely and favorably known throughout Wisconsin, especially among the Whigs, with whose politics he agreed. Early in 1852 Mr. Ward returned to Milwaukee, almost immediately leaving for California. There in July, 1852 he died at Marysville. *Manuscript record.*

JEFFERSON COUNTY

JONAS FOLTS, son of John and Catherine Folts, was born March 12, 1808 at Herkimer, Herkimer County, New York. He was brought up on a farm, educated at Fairfield Academy, and in 1828 went to Oneida, where for seven years he worked as a bookkeeper. Early in 1835 Jonas Folts came West in company with Elisha W. Edgerton. The former entered the employ of George W. Dole at Chicago; after three months he sought the new town of Milwaukee, bought some lots on East Water Street, and thence set out to explore the Rock River country. By September he was ready to return to his New York home, where the next month he married and in the spring of 1836 brought his wife to Milwaukee. There they built a house, but in the autumn of that year removed to the Talbot Dousman settlement at Summit, in the later Waukesha County. There Folts lived on a farm for five years and held several local offices. In 1841 he returned to New York State to live; two years later, however, he came back to Wisconsin and settled at Hebron in Jefferson County. There Folts was register of deeds 1846-1847, town and county clerk, and justice of the peace for many years. He was elected to the constitutional convention on the Democratic ticket. After service therein he did not again hold a state office until 1868, when he represented his district in the assembly. He died at his home in Hebron, June 24, 1876. *Manuscript record.*

MILO JONES was one of the best-known pioneers of Wisconsin. The son of Edward and Lucy Farnsworth Jones, he was born February 16, 1809 at Richmond, Vermont, sixteen miles from Burlington. Young Jones was so eager for an education that he walked daily to the latter place for instruction; later he entered a surveyor's office, whence in 1832 he came West in search of employment. For a year or two he surveyed in Michigan; in 1834 he secured a contract for surveying several townships in Wisconsin, when he laid out the streets for Milwaukee village. In 1835 he made an expedition westward to Rock River to examine lands and entered at the land office, as soon as it was opened, seven hundred acres on the site of Fort Atkinson. Thither in 1838, after surveying a season in Iowa, Milo Jones brought his family from Vermont; there he passed a long and useful life, promoting the good of the community and developing agriculture and stock raising. About 1840 the Indians in the neighborhood appeared troublesome; Jones was appointed by Governor Dodge aide-de-camp, and took charge of the deportation of the tribesmen. In 1849 he opened the Green Mountain House at Fort Atkinson, where he was postmaster in the fifties, president of the village, and first mayor of the city in 1878. In early years Jones was a Democrat; as such he represented Jefferson County in the constitutional convention. During the Civil War he became a Republican, but late in life reverted to the Democratic party. He was an early director of the Chicago and Northwestern Railway and always a progressive agriculturist. He died November 17, 1893 on the land he had bought from the government nearly sixty years before, having contributed greatly to the progress of the city of Fort Atkinson. *Manuscript record.*

THEODORE PRENTISS was a member of the first constitutional convention. For a biographical sketch, see *Wis. Hist. Colls.*, xxvii (Constitutional Series, ii), 787.

ABRAM VANDERPOEL, of Dutch ancestry, was born April 1, 1806 at New Canaan, Columbia County, New York. He grew up on a farm, was married in 1825, and three years later removed to Oswego County, New York, where he cleared land for a large farm and where he lived for ten years. In 1838 Vanderpoel determined to seek a new home in Wisconsin Territory; he brought his family, arriving June 11, 1838 at Jefferson. There he remained for two years, when he removed to Waterloo, Jefferson County, whence he was elected as a Democrat to the constitutional convention. In the convention he served on the committee on education and school funds, speaking occasionally with vigor and proving a good working delegate. In 1850 Vanderpoel was an assemblyman from Waterloo; he also served for a time as chairman of the county board of supervisors. In 1858 he again removed to a newer country, opening a farm at Newport, Columbia County, on the Wisconsin River just below Kilbourn. When the Civil War began Vanderpoel, although far beyond the military age, volunteered and recruited a company. October 3, 1861 he was commissioned captain of the Wisconsin River Rifles that rendezvoused at Delton in Sauk County. During the enlistment period Captain Vanderpoel spoke frequently with much effect at war meetings. His was an impulsive nature and he was noted for the vigor and eloquence of his speeches. The company reached Camp Randall, November 1, and was sworn into service as Company E of the Twelfth Wisconsin Regiment. January 11, 1862 the men entrained for Weston, Missouri, whence they were ordered to Fort Leavenworth and then to Fort Scott in Kansas. Captain Vanderpoel and his wife accompanied them and were father and mother to the boys of Company E. Early in May the regiment received orders for a long march, whereupon Captain Vanderpoel, upon whose health the fatigues of camp life told heavily, felt obliged to resign. He returned to his Wisconsin home but never recovered from his war-time experiences. In August, 1874 he visited a sanitarium at Fond du Lac in search of relief; there September 28 he passed away. *Story of the Service of Company E of the Twelfth Wisconsin Regiment* (Milwaukee, 1893), 495.

LAFAYETTE COUNTY

CHARLES DUNN. Morgan L. Martin said of Judge Dunn that he was the strongest man intellectually in the second constitutional convention. Although but forty-eight years of age when the convention met, he had already had a distinguished career and was one of the most highly respected men of the territory. He was born December 28, 1799, at Bullitt's Lick, Kentucky, a few miles from Louisville. His father was an Irish gentleman of ample means, while his mother, Amy Burks, was a Virginian. Charles was the eldest son and in 1809 went to Louisville to be educated. He later studied law with Wordon Pope and with his brother, John Pope, of Transylvania University. Young Dunn was opposed to the system of slavery and in 1819 he left Kentucky for Kaskaskia, Illinois, where he completed his legal studies

under Nathaniel Pope. In 1820 Dunn was admitted to the bar; the next year he married and settled at Jonesborough to engage in practice; he also lived for some time at Golgonda, Illinois. In 1829 he was appointed Illinois canal commissioner and assisted in laying out the first plat of Chicago, where he superintended the sale of lands. During the Black Hawk War (1832) he recruited a company and advanced into Wisconsin, when he was dangerously wounded by a blundering sentinel. Upon the organization of Wisconsin Territory, Charles Dunn, who had recently acted as chairman of the judiciary committee in the Illinois assembly, was appointed by President Jackson chief justice of the new territory. He served on the bench throughout the entire territorial period. He was elected as a Democrat to the second constitutional convention, wherein he was chairman of the committee on the judiciary; he was largely influential in preparing the judicial provisions of our present constitution. After the convention Judge Dunn was an unsuccessful candidate for United States Senator and then retired to private practice. In 1853 he was elected to the senate and was reëlected for a second term, serving through four years as chairman of the judiciary committee. In 1856 he was defeated for Congress by C. C. Washburn. Throughout his career Judge Dunn remained a Democrat but did not support the cause of slavery. He was the owner of the site of the first territorial capitol at Belmont, where he made his home for many years. He was a man of great popularity and hospitality, and his house was the center of social life. His only daughter became the wife of Nelson Dewey, first governor of the state. Winslow, *Story of a Great Court*, 33-36; *Manuscript record.*

JOHN O'CONNOR, born October 16, 1814 in Bedford County, Pennsylvania, was elected to the convention on the Democratic ticket from Shullsburg. O'Connor was a newcomer to Wisconsin, having migrated in 1846 from Pennsylvania. All that is known of his early life is his employment by the canal commissioners of his native state on the Portage Railway over the Alleghenies at Hollidaysburg. At Shullsburg he was a merchant; there he died March 29, 1854. Tenney and Atwood, *Memorial Record*, 246-247.

ALLEN WARDEN was born April 8, 1821 at Victory, Cayuga County, New York. He received an excellent academic education at Auburn, Darien, and Elmira in his native state. From the last-named place, where he had been a merchant, he came in 1842 to Wisconsin and bought a large tract of land at Cross Plains just west of Madison. He soon disposed of this investment and went to Wiota in Lafayette County, then a considerable mining community. Here he entered into partnership with John Z. Saxton of Argyle in a merchandising business. When delegates were to be elected for the second constitutional convention W. S. Hamilton of Wiota, son of Alexander Hamilton, was candidate for western Lafayette County. Allen Warden was put up by the Democrats and defeated Colonel Hamilton by forty-six votes. In the convention he served on the committee on education and school funds. In 1849 Warden removed to Beloit, where he was chairman of the village and postmaster from 1852 to 1856. At the close of his term of office he became a resident of Darlington, where he was in the flour business for several years.

Warden before the Civil War was a Douglas Democrat; he became, however, a follower of Lincoln and was presidential elector at his second election, and also one for Grant in 1868. In both campaigns Warden was a prominent campaign speaker. In 1872 he supported Greeley, and was himself a Democratic candidate for Congress but was defeated. In 1875 because of his wife's health he determined to remove to a milder climate. Having settled at Lamar, Barton County, Missouri, he became mayor of the town and judge of the county court. There Judge Warden passed the remainder of his life, dying March 11, 1897. *Manuscript and printed records.*

MILWAUKEE COUNTY

JOHN L. DORAN was born in 1814 in Ireland, where he grew up and was educated for the bar. In 1844 he emigrated to America and settled at Milwaukee, where in 1847 he was elected city attorney. He represented Milwaukee as a Democrat in the constitutional convention, serving on the committee on schedule and miscellaneous provisions. Doran was frank, genial, highly cultivated, and very popular with his Irish-American fellow-citizens. In 1851 he served in the state assembly. During the Civil War he was appointed colonel of the Seventeenth Wisconsin Volunteers, known as the Irish regiment. March 15, 1862 this regiment was mustered in at Camp Randall, nine hundred and forty-one strong; however, when ordered to the front the regiment mutinied because it had not been paid. The joint exertions of Governor Harvey and Colonel Doran brought the men to terms and they embarked for St. Louis, whence they moved South in time to participate in the battle of Shiloh. Colonel Doran led his troops in that battle with great gallantry. He resigned at the close of 1862 and soon removed to Chicago, where he practiced law for many years. Colonel Doran's death occurred at Chicago in 1888 or early in 1889. *Manuscript record.*

GARRETT M. FITZGERALD was a member of the first convention. For his biography, see *Wis. Hist. Colls.*, xxvii (Constitutional Series, ii), 771.

ALBERT FOWLER was a native of Massachusetts, born in Monterey, Berkshire County, September 8, 1802. His father, Elijah Fowler, died when Albert was ten years old; soon thereafter the family went to live at Westfield, Chautauqua County, New York, then a frontier region. Young Fowler, enured to pioneer hardships, in 1832 sought a farther frontier; his first visit to Chicago occurred when the excitement of the Black Hawk War was at its height and the cholera epidemic was raging among the troops. After a winter in the East Fowler returned the spring of 1833 to Chicago with an outfit of Indian goods, and at the Potawatomi treaty of September realized a considerable profit. Thereupon he with three comrades purchased a wagon and team of horses and drove overland to Milwaukee, then only a fur trade post, arriving November 18, 1833. During the winter of 1833-1834 these four young men kept house in a trader's deserted cabin. The next spring the other men left, while Fowler remained to work for Solomon Juneau. The latter had sent young Fowler in January, 1834 on an Indian pony to Chicago

to get a physician for Mrs. Juneau, and soon thereafter the newcomer became a member of Juneau's family, learned to use the Potawatomi and Menominee languages, and was occupied with the fur trade. In 1835, when Milwaukee began to grow, Fowler was commissioned justice of the peace and devoted more time to real estate than to the Indian trade. The earliest records of Milwaukee County are in his handwriting, and he rendered many services to the youthful community. In the panic of 1837 he lost heavily; shortly thereafter he took up land at Wauwatosa, holding his residence in Milwaukee, where he was clerk of court and register of deeds. In 1847 he was elected as a Democrat to the constitutional convention, wherein he was much respected for his probity and excellent judgment. After residing in Milwaukee twenty years Fowler in 1853 moved to Rockford, Illinois. There he was three times elected mayor of the city, and contributed much to its upbuilding. He died at Rockford, April 12, 1883; the burial was at Forest Home, Milwaukee. *Newspaper record.*

Byron Kilbourn, one of the founders of Milwaukee and a promoter of state improvements, was born at Granby, Connecticut, September 8, 1801. His childhood home was in Ohio, whither when the boy was two years of age his father removed and founded the town of Worthington, near Columbus. Honorable James Kilbourn, the father, was a prominent merchant of Ohio and one of its Congressmen. His wife, Lucy, was the daughter of John Fitch, the inventor. Byron was well educated for his time and early began to share in his father's enterprises. At the age of twenty-two he began surveying for canal routes and in 1832 was resident engineer of the Miami Canal. Through his acquaintance with Micajah Williams he secured a contract for surveying in western Michigan Territory and landed in May, 1834 at Green Bay. During his surveying work he visited Milwaukee and was impressed with the possibilities of the site. At the land office sale of July, 1835 he bid in the west side of Milwaukee River and thereafter made that his home. A separate village called Kilbourntown was platted, which in 1839 united with Milwaukee east of the river. Kilbourn's chief project for the growth of this territory was the Milwaukee and Rock River Canal; for this he secured a land grant from Congress; however, for many reasons the canal was never built. He was also a prominent promoter of the Milwaukee and Mississippi Railway. In 1840 Kilbourn was Democratic candidate for Congress, but was defeated by James D. Doty. Kilbourn served in the territorial legislature. In the second constitutional convention he was chairman of the committee on general provisions. He was elected mayor of Milwaukee in 1848 and again in 1854; in 1855 he was defeated for the United States Senate by one vote. In 1868 he left Milwaukee to recuperate his health in Florida, where December 16, 1870 he died. He is buried in Jacksonville Cemetery. *Manuscript and printed records.*

General Rufus King was one of the most brilliant editors who ever lived in Wisconsin. Of distinguished ancestry, son of Charles King, president of Columbia College, grandson of a signer of the Declaration of Independence, Rufus King was born January 26, 1814 in New York City. He was designed for a military career, entered West Point in 1829, and graduated four years

later as an engineer. He was stationed for a time at Fortress Monroe and afterwards employed on the Ohio-Michigan boundary survey. In 1836 he resigned to become an engineer on the Erie Railway. His literary tastes, however, drew him into journalism and in 1839 he became editor of the Albany *Advertiser*, a Whig journal; from 1841 to 1845 he was associate editor with Thurlow Weed of the Albany *Evening Journal*. Meanwhile he was for four years adjutant general of the state. In 1845 General King became editor of the Milwaukee *Sentinel*, which he ably conducted for sixteen years. He served the new community as regent of the State University and as colonel of Wisconsin militia; from 1859 to 1861 he was city superintendent of Milwaukee schools. In 1861 President Lincoln appointed him minister to the Papal States at Rome, but on the outbreak of the Civil War King surrendered the appointment in order to volunteer for military service. He was made brigadier general and organized the famous Iron Brigade, which he commanded for nearly two years. In October, 1863 ill health forced his resignation, and President Lincoln again appointed him minister to Rome. This time he accepted and served until 1867. For a short time thereafter he was employed in the New York Custom House; he died in that city October 13, 1876. General King was an orator and a statesman. In the constitutional convention he served on the committee on executive, legislative, and administrative provisions, and on several special committees. His experience and wisdom contributed largely to the success of the constitution. *Manuscript and printed records.*

Charles Henry Larkin was elected to the convention from the south side of Milwaukee to represent the Democrats. Although an admirer of Henry Clay, Larkin adhered to the party of his opponents. In the convention he was popular and genial, but took no large share in the discussions. Larkin was a native of Connecticut, born at Stonington in 1810. He grew up on his father's farm and in 1823 removed with his parents to Alden, near Buffalo, New York. There he attended the village academy and began business life as a clerk in Alden and later in Buffalo. In 1836 Larkin came to the then tiny village of Milwaukee, where he thereafter made his home. He had large land holdings, bought and sold horses, built warehouses, and engaged in the forwarding trade. In his later life he lived on Hanover Street and there passed away August 16, 1894. He held many offices in the gift of the people: he was sergeant at arms in the territorial assembly of 1845; a member of the state senate 1866-1869; and of the assembly in 1872, 1874, and 1875. He was county treasurer and sheriff of Milwaukee County, school commissioner, and commissioner of public debt. During the Civil War he was offered a colonel's commission but did not qualify; he actively supported the government, however. In all places of trust he acted efficiently and honestly. *Manuscript and printed records.*

Moritz Schoeffler was the only delegate of German birth in the second constitutional convention. He was elected as a Democrat from Milwaukee, where he was editor of its oldest German newspaper. Schoeffler was born March 8, 1813 at Zweibruecken on the Rhine in the Bavarian Palatinate. He was educated as a printer and after emigrating to America in 1842 worked at his trade in New York and in several other American cities. In 1844 he

bought some German type, came to Milwaukee, and established the *Banner*, which was published until 1913, becoming in 1850 a daily and uniting with its rival the *Volksfreund* in 1855. In the convention Schoeffler was influential in securing the article on franchise, which gave liberal privileges to foreigners. He served as register of deeds in 1850-1851 and as collector of customs in 1857. Schoeffler was an ardent Democrat; he acted, however, as one of the vigilance committee at the time of the Glover fugitive slave rescue in Milwaukee; while actively opposed to slavery, he never joined the Republican party. He continued his editorial connection with the *Banner* until 1874, when failing health caused retirement. He died December 6, 1875. Tenney and Atwood, *Memorial Record*, 256-258.

PORTAGE AND SAUK COUNTIES

William H. Kennedy represented in the second constitutional convention as a Whig the Wisconsin "pineries," then politically a part of Portage County. He came in 1845 to Mosinee from Pennsylvania, where he was born April 15, 1817, the son of William and Jeanette Farries Kennedy. The great-grandfather of William Jr. came in the early eighteenth century from northern Ireland and belong to the old-school Presbyterians. The family maintained their religious connection even in the midst of a Quaker settlement; William H. Kennedy aided in starting the first Presbyterian Society in northern Wisconsin. He received an academic education; having studied law, he practiced for a short time at Mount Carroll, Illinois, before seeking the Wisconsin pineries. There he was a lumberman as well as a lawyer, first at Mosinee, then at Wausau. At the latter place he served as judge; in 1857 he was president of the Sons of Temperance. In 1859 he accompanied the yearly lumber fleet on its voyage down the Wisconsin and the Mississippi, was taken ill at St. Louis, and died there August 29. *Manuscript record.*

RACINE COUNTY

Albert Gallatin Cole, son of Isaiah M. and Olive B. Monroe Cole, was born April 4, 1819, at Adams, Jefferson County, New York. Young Cole determined to study law, and at the age of twenty-one he was admitted to the bar at Albany. The same year he married and began practice in Oswego County. Some time during his early manhood Cole was employed as a surveyor on one of the first railroad lines in the state of New York. In 1846 he determined to remove to Wisconsin Territory and arrived at Southport on July 4. He settled at Burlington in Racine County, and was thence elected the next year as a Democrat to the second constitutional convention, wherein he served on the judiciary committee. In 1863 he removed to Kenosha, where later he became a partner of General Lovell. Lovell had a high opinion of the legal ability and knowledge of law possessed by Cole; nevertheless he never held a judicial position. He was, however, justice of the peace, and was regarded with esteem in his community. He had five sons, two of whom served in the Civil War, one being killed at the battle of Bull Run. Some time before his death Cole became paralyzed, and after long suffering died June 2, 1889 at his Kenosha home. *Manuscript record.*

STEPHEN A. DAVENPORT was a native of Madison County, New York, where he was born in 1806. There he grew up, married, and had several children before he removed, in the later years of the territorial period, to Brighton, Racine (now Kenosha) County and bought a large farm. He was a man of fine abilities, well-read, and well-informed; he rendered useful service to the convention, to which he was elected as a Democrat. In 1850 Mr. Davenport had the "gold fever," and left his family to make his fortune in California. He had washed out considerable metal in the American River, when he inadvertently fell into the stream, took a severe cold, and died in December, 1850. He was buried in California. His descendants lived for many years on the home farm in Kenosha County. *Manuscript record.*

ANDREW B. JACKSON, son of Orrin and Hannah Frisbie Jackson, was born at Wolcott, Connecticut, in 1814. He was educated and married at New Haven. In 1837 he removed to Racine County and settled on a farm at Bristol. In early days he was a Democrat, and as such was elected to the territorial assembly of 1846 and to the constitutional convention. Upon the formation of the Republican party he joined its ranks and was appointed April 22, 1861 register of the Menasha land office. Being in Washington directly after the firing on Sumter, Jackson was enrolled in what was known as the "Clay Guards" and prepared to defend his country's capital with his life. (See his letter published in *Wisconsin Magazine of History*, iii, 244-246.) The sacrifice was not required of him, however, and he served until 1866 in the Menasha land office. In the autumn of 1868 Jackson removed to Evanston, Illinois, where he had large land interests. He died at the neighboring suburb of Rogers Park, March 25, 1878. Jackson was a man of integrity and honor; he took his work for the convention earnestly, and gave conscientious attention to the wishes of his constituents. He was actively attached to the interests of the Methodist Church, and was held in esteem in every community where he resided. *Manuscript record.*

FREDERICK S. LOVELL was a member of the first constitutional convention. For a biographical sketch, see *Wis. Hist. Colls.*, xxvii (Constitutional Series, ii), 782.

SAMUEL R. MCCLELLAN, son of Robert and Sarah Duncan McClellan, was born March 19, 1806 at Coleraine, Massachusetts. His father having died when the boy was five years old, Samuel went to live with an uncle, Dr. John McClellan, of Johnstown, New York. The younger McClellan was educated for his uncle's profession; when he was twenty years old he spent a year in Boston attending medical lectures and the next year began to practice near home. After trying his fortune in one or two small towns, in 1830 Dr. McClellan returned to Johnstown and practiced there for five years. Then he removed to Hudson, New York, where he had a large and successful practice. In 1845 Dr. McClellan determined to start afresh in a new part of the country and brought his family to Wisconsin, where he opened a large farm in Wheatland, now Randall Township of Kenosha County. Thence he was elected to the convention on the Democratic ticket; he served therein on the judiciary

committee. He was a member of the state senate for the years 1858-1859; for three years he was president of the Kenosha County Agricultural Society. Later in life Dr. McClellan removed to the city of Kenosha and once more engaged in medical practice; he died at the latter place, June 11, 1890. In the practice of his profession and in his civic duties Dr. McClellan was a quiet but esteemed member of every community where he lived. Tenney and Atwood, *Memorial Record*, 243-244; *Manuscript record.*

James Denoon Reymert was the only native of Norway elected to either convention. He was born in 1821 in Farsund, a southern Norwegian port; at the age of fifteen he went to a commercial college at Christiania and the next year he began business in Scotland, the home of his mother. After five years as a merchant at Leith, Reymert came to America and settled in Wisconsin Territory, where many of his race were already living. Upon his first arrival in the township of Norway, Racine County, he supported himself by teaching; in 1847 he assumed the editorship of the *Nordlyset*, the first Scandinavian paper in America. He was elected to the convention as a Democrat and served on the "omnibus" or general provisions committee; he supported the proposal that aliens should have the same right of property descent as citizens; he also strongly urged liberal provisions for alien voters. Reymert was a man of social nature, free from bigotry, quick and individual in his decisions, and gifted with a warm imagination. His command of English made him serviceable to his countrymen and his community. In 1849 he was elected to the assembly; in 1854 and 1855 he sat in the state senate. In 1857 he again entered the assembly, this time from Milwaukee County, where he had a sawmill on Milwaukee River. The same year Reymert was appointed receiver of the land office at Hudson; there he was nominated for Congress in 1858 as a Douglas Democrat, but in the rising tide of Republicanism he failed of election. In 1861 Reymert removed to New York City, where he practiced law and also sold life insurance. In 1874 the state of his health made a drier climate necessary; thereupon he visited the high tableland of Peru, and after obtaining relief spent two years in South America. Returning to San Francisco he embarked once more in his profession, but after a year removed to the softer climate of Arizona, where at Pinal he spent several years engaged in mining, law, and journalism. He was the editor and publisher of the Pinal *Drill.* In Arizona Reymert acquired a competence and became a well-known citizen. He died in the spring of 1896 at Alhambra, California. Wisconsin Historial Society *Proceedings*, 1916, 190-194; *Manuscript record.*

Horace T. Sanders came to Wisconsin in April, 1842 and settled at Racine. He was born at Sheldon, Genesee County, New York, the first of May, 1820 and received a collegiate and legal education. He had an extensive law practice at Racine, where he was elected in 1847 as Democratic delegate to the constitutional convention. Although one of the youngest of its members, he took an active part in its debates, serving on the committee on general provisions Sanders was later elected district attorney for his county, and in 1853 represented Racine in the assembly. At that session he was outspoken in his opposition to Judge Hubbell, and was appointed chairman of the committee that

conducted his impeachment trial. On November 27, 1861 Sanders was commissioned colonel of the Nineteenth Wisconsin Infantry, a regiment he did much to enlist. After a winter at Camp Randall, occupied in part in guarding Confederate prisoners, the Nineteenth entrained June 2, 1862 for the front. Ordered to Norfolk, Virginia, Colonel Sanders was made provost judge for that place; his Fourth of July oration for that year at Norfolk was much commented on both in the North and in the South. Colonel Sanders remained with his regiment throughout the war, for the most part serving in Virginia and participating in the offensive of 1864 against Richmond and Petersburg. At the war's close he was brevetted brigadier general, and having been mustered out April 29, 1865, returned to his home at Racine. The long campaigns had, however, undermined his constitution and he died October 6 of the same year. *Manuscript and printed records.*

THEODORE SECOR was the last survivor of the second constitutional convention. He died April 24, 1910 at Minneapolis at the age of ninety-six. He was born of Huguenot ancestry on July 6, 1814 in Greenville, Green County, New York. After an academic education he went to Pittsfield, Massachusetts, to study medicine and surgery, graduating in 1837. He practiced for a time in Fulton, Oswego County; thence he removed in 1840 to Racine. After a year or two of professional service he took up land in Mount Pleasant Township and began farming; there he was elected on the Democratic ticket to the convention, in which he took an active but not prominent part. In 1855 Secor removed to New Lisbon in Juneau County, where he assisted in organizing the Republican party; and in 1860 he was delegate to the national convention that nominated Lincoln. In 1877 he removed to Spencer, Iowa, and established a mercantile business, which he conducted until 1903, when he went to make his home in Minneapolis. *Manuscript and printed records.*

ROCK COUNTY

ALMERIN MARSHALL CARTER was a native of Litchfield County, Connecticut, where he was born October 4, 1814, the son of Guy and Sarepta Marshall Carter. About a year later the family removed to Paris, Oneida County, New York, where his father became a trustee of Madison University at Hamilton. There Almerin graduated in 1832. The life of a farmer attracted the young man, and for ten years he remained near his family home. In 1843 he removed to Wisconsin to take up government land in Johnstown Township, Rock County, whence he was elected on the Whig ticket to the constitutional convention. In the convention he was a member of the committee of fifteen, headed by Byron Kilbourn, to prepare business for the assemblage; this committee was known as the "breaking team." Carter was one of the first county commissioners of Rock; in 1868 he represented his district in the state legislature, where he served on the corporation committee. In later life Carter became a Republican, during the convention having voted with the antislavery Whigs. His long life was passed upon his farm and his interest in agricultural pursuits was keen. He was a member of the State Grange and of the order of Odd Fellows. He organized the first Congregational Society in Johns-

town. In 1882 he wrote a brief account of the constitutional convention, which in 1896 he rewrote and expanded. Two years later, while living in Janesville, he attended the semicentennial celebration of the constitutional convention, when he was stricken with paralysis and died June 7, 1898. *Manuscript record.*

JOSEPH COLLEY was the oldest member of the second constitutional convention, having been born March 8, 1777 at Newburyport, Massachusetts. When seven years of age he went to live in Bedford, New Hampshire, where he remained fifty-six years, serving in 1811 as town selectman, and for many years as justice of the peace; he was also in 1828-1829 a member of the New Hampshire legislature. In 1836 his son Samuel became interested in the New England Emigrating Company, whose promoter, Dr. Horace White, lived at Colebrook, New Hampshire. Mrs. White was a native of Bedford; and in 1838 Samuel Colley, his family, his sister Mrs. Jane Atwood, and her daughter accompanied Mrs. White to the new home her husband had built for her at Beloit, Wisconsin. Two years later the elder Colley followed his children and made Beloit his future home. He had intended when reaching the new territory to retire from public office, but in 1846 he was chosen one of the trustees of the village, and in 1847 was elected as a Whig to represent Rock County in the second constitutional convention. In that body he served on the committee on schedule and miscellaneous provisions. He favored negro suffrage and was a strong antislavery man. The remainder of his life was passed in Beloit, where he died May 7, 1867. Tenney and Atwood, *Memorial Record*, 201-202; *Manuscript record.*

PAUL CRANDALL was a typical New England pioneer, who in successive periods moved across the North American continent to make his final home on the western coast. He was born September 20, 1802 on a farm in Montville, eight miles from New London, Connecticut. He grew up on this farm with the limited educational opportunities of the country lad of his day. In 1823 he removed with his father's family to western New York, then a wilderness frontier. After subduing a farm in that region, Paul Crandall married and settled for a few years at Newport, Ohio. Thence in April, 1842 he came to Lima, Rock County, Wisconsin, and opened a new farm. Crandall was at that time an antislavery Whig; in 1846 he was a candidate for the first constitutional convention, when the entire Rock County Whig ticket was defeated. In 1847 this ticket was successful, and Crandall found himself one of Rock County's delegation to the convention. During the session of the convention his sound judgment and quiet but firm convictions were much appreciated by his associates. In 1849 he was without his own knowledge nominated for the state assembly and elected thereto. He was chosen one of a committee, whose chairman was Marshall M. Strong, to revise the state laws, and spent thirteen strenuous weeks in this service. In 1852 Crandall again listened to the call of the West. He left his home in Rock County and joined a caravan for the Oregon country; he bought a farm near Salem and there spent the remainder of his days. From the Whig party he gravitated to the Republican party, but refused to hold office in Oregon. He died at his home near Salem, January 9, 1889. *Manuscript record.*

EZRA ALBERT FOOT was a self-made man in the best sense of the word; his parents, Joseph and Abigail Baldwin Foot, were poor, and after his father's early death he cared for his mother and family for some years. Their home was in Connecticut, where at North Goshen the subject of this sketch was born February 6, 1809. With few early advantages he was quickly recognized in his community as a man of ability and worth, and was chosen for many local responsibilities. In 1843 he became agent for an estate that had large holdings in Wisconsin. When visiting the territory he secured land for himself and in 1845 he removed his family to the present Footville, Rock County. He was at once appointed justice of the peace and in 1846 was nominated on the Whig ticket as delegate to the first constitutional convention. All the Whigs from Rock County were defeated at this time; but in 1847 Foot was again a candidate and this time was successful. In the convention he took an active part, serving on the committee on engrossment. He was in the state assembly in 1857 and again in 1867. At the outbreak of the Civil War he enlisted over one hundred recruits, while as a member of the state senate in 1861 and 1862 he supported the necessary war appropriations. From 1862 to 1868 he was trustee of the State Hospital. During the same period he was active in building up banking and railroad interests in Rock County, owning several warehouses along the line of railway. In 1869 he removed to Kansas, where he promoted the town of La Cygne, of which he became the first mayor. After seven years Foot returned to live in his Wisconsin home, and the next year was elected chairman of the board of supervisors and justice of the peace. He was an active member of the Methodist Church and a trustee of Evansville Seminary. He died at his home at Footville, December 21, 1885. *Manuscript record.*

LOUIS POWELL HARVEY, the seventh governor of Wisconsin, was one of the youngest members of the second constitutional convention, having been born July 22, 1820 at East Haddam, Connecticut. He was a descendant of Thomas Harvey of Revolutionary fame, and son of David and Almira Powell Harvey. When a boy of eight years, young Harvey's family removed to Strongsville, Ohio, where the boy grew up with a taste for books and a desire for an education. In 1837 he entered Western Reserve College, supporting himself by book binding. His health failed before he could graduate and he sought employment in Kentucky, where he taught a few months at Nicholasville, until a better position offered at Woodward College, Cincinnati. At this latter place he remained two years. In the autumn of 1841 he came to Southport, Wisconsin Territory, and started an academy that proved successful. Harvey was an enthusiastic Whig and in 1840 campaigned for William Henry Harrison; after his death President Tyler appointed the young orator postmaster at Southport; however, within a few months he resigned because of disapproval of Tyler's policy. About that time he started the *American* at Southport, which he ably edited while continuing to teach. In 1847 Harvey married Cordelia A. Perrine from New York, and together they removed to Clinton, Rock County, where Harvey was a merchant. There he was elected on the Whig ticket to the convention, in which he did much as a member of the committee on education to develop the present system of public schools. In 1851 the Harveys removed to Waterloo, which they renamed Shopiere, tore down a distillery, and built a mill upon the water power. There Harvey was

chosen state senator, serving from 1854 to 1857. He was popular with his colleagues and in 1859 was elected to the secretaryship of state. Two years later both Union and Republican parties named him governor, and he took office in January, 1862 amidst the throes of the Civil War. His administration was brief; on April 19 of the same year, after visiting the battle field of Shiloh to carry cheer and comfort to Wisconsin soldiers, he was drowned by accident in the Tennessee River. His body was recovered and brought to Madison for burial. Mrs. Harvey became one of the most active and useful of the women who brought aid and comfort to the soldiers throughout the Civil War. *Civil War Messages and Proclamations of Wisconsin War Governors*, 89-91.

Edward Vernon Whiton was recognized as one of the leading members of the convention. He was second to Judge Dunn on the judiciary committee; his advice was sought on every difficult question, and his efficient and reasonable solutions were an important factor in shaping the constitution. It fell to Whiton's lot during the first decade of statehood to be the chief interpreter of the instrument he had helped to frame. It is difficult to say wherein he was most eminent—as a legislator, a constitution maker, or a judge. Edward V. Whiton, son of Joseph Whiton, was born in Berkshire County, Massachusetts, June 2, 1805. The boy was educated at his native town and at one time he served as its librarian, when he acquired the knowledge of history that proved so useful to him in mature life. About 1830 young Whiton determined to study law. He thereupon entered the office of William Porter at Lee and was admitted to the Massachusetts bar October 4, 1836. It is said that Daniel Webster gave the young lawyer a letter of introduction to western friends. Be that as it may, Whiton spent his first western winter in Lorraine County, Ohio, and came to Wisconsin Territory in the spring of 1837. He had in youth learned the carpenter's trade; taking up land on Rock River on the site of the present Janesville, he built himself a log cabin and became acquainted with his neighbors. These neighbors, few in number but full of hope for the new territory, in 1838 elected the young lawyer to the legislature. There Whiton was appointed a member of a committee to revise the statutes, and in the final editing it fell to his task to prepare the work for print. These revised statutes of 1839 served the territory until the ratification of the state constitution. Whiton was a member of the legislature until 1842, at one session acting as speaker. Then he was elected to the council, wherein he served for four years. He was chosen a delegate to the constitutional convention as a Whig. Unfortunately for posterity he requested the reporters of the convention not to chronicle his speeches, so but the barest outline of their content is given in the journal. His ability, however, impressed itself upon all his associates. In 1848 he was named a candidate for judge of the second judicial circuit. His opponent was a well-known Democrat, David Noggle; yet in spite of a dominant Democratic majority Whiton was elected and held the office until the change in the formation of the state supreme court in 1852. In that year he was elected chief justice, reëlected in 1857, and died at Janesville, April 12, 1859 before the expiration of his last term. He was an early member of the State Historical Society, one of its vice-presidents, and its constant friend. Winslow, *Story of a Great Court*, 16-17.

ST. CROIX AND LA POINTE COUNTIES

GEORGE WASHINGTON BROWNELL was born November 6, 1809 in Florida, Montgomery County, New York. His youth was spent in Onondaga County of the same state, whence about 1834 he migrated to St. Louis and became interested in the lead mines of Missouri. Brownell was a scientific prospector, seeking mining claims in various parts of the country. About 1842 he visited the Wisconsin lead mines, where he became much interested in geological formations and mineral locations. While in this region he was for a time in the editorial department of the Galena *Gazette*. He likewise visited Washington to interest the authorities of the Smithsonian Institution in his scientific ideas. In 1846 he removed to the upper Mississippi in order to prospect for copper mines. He made locations at St. Croix Falls and on Kettle River, then visited the new Lake Superior copper regions. Impressed with the possibilities of St. Croix Falls he decided to locate there, and thither in the autumn of 1847 he brought his bride. The same season he was elected to the constitutional convention; he was three weeks en route to Madison, traveling on snowshoes and camping in the woods. In the convention he attempted to promote a new state on Lake Superior, which would have made Wisconsin's northern boundary the line of the Chippewa and Montreal rivers; but he was overruled, and refused to sign the constitution as adopted. Soon after the close of the convention Brownell became agent for a large Boston company that proposed developing the mines and lumber interests of the St. Croix. Their plans were too ambitious for immediate success, so in 1851 Brownell returned to Galena and became a shipper of grain. Ten years later he purchased a plantation near Vicksburg; but the Civil War interfered with his plans for raising cotton. Meanwhile he became interested in Colorado mines and in 1867 took the stage at Atchison, Kansas, that went overland to Denver via the Smoky Hill route. June 15 near Pond Creek on the western border of Kansas the stage party was attacked by hostile Indians. Brownell and one fellow traveler were killed. Their remains, shockingly mutilated by the Indians, were recovered and buried by General Grant's order at Fort Wallace. Brownell was a man of great ability and strong character; he made loyal friends, and his share in developing the mining interests of the state was considerable. *Manuscript record.*

SHEBOYGAN AND MANITOWOC COUNTIES

SILAS STEDMAN was born in 1785 at Chicopee, Massachusetts. His mother's maiden name was Sarah Howard. His father, Phineas Stedman, was a soldier in the Revolution; the son grew up with a taste for military life and was successively major and colonel of militia. He also served one term in the Massachusetts legislature. In 1835 Colonel Stedman came to Wisconsin in search of investments. After leaving Milwaukee for the north he visited Sheboygan Falls and planned to purchase at this site. At Green Bay he met Lieutenant R. B. Marcy and arranged with him and Samuel Beall to form a company to control the falls. Later this company was extended to take in Judge Doty, A. G. Ellis, and others. The land was bought at $13.50 an acre.

Colonel Stedman afterwards bought out several of his partners, while Lieutenant Marcy sold his share to David Giddings. The next year Colonel Stedman contracted for a sawmill at the falls, laid out the village, and named it Rochester. That year he brought his family to live in Wisconsin. Colonel Stedman was elected to the convention as a Whig; he served on the committee on education and school funds. At the time of the Civil War he became a Republican and was postmaster at Sheboygan Falls from March 19, 1861 to January 18, 1865. Soon after his retirement his death occurred, the exact date of which has not been ascertained. *Manuscript and printed records.*

WALWORTH COUNTY

EXPERIENCE ESTABROOK. It has fallen to the lot of but few men to have been the founders of two commonwealths. Estabrook aided in drawing the constitution of Wisconsin in 1847-1848 and that of Nebraska in 1871. He was of Puritan ancestry and could trace his line to John Alden of the *Mayflower*. The eldest son of Seth Estabrook and Hannah Hebard, he was born in Lebanon, New Hampshire, April 30, 1813. He studied law and practiced for a time in Erie County, New York. In 1840 he removed to Wisconsin Territory and settled at Big Foot Prairie on Lake Geneva, Walworth County. There his abilities quickly attracted attention; he was chosen district attorney for the county and later served as school commissioner. In the constitutional convention he was chairman of the committee on education and school funds. Although a member of the Democratic party, Estabrook was in favor of suffrage for the negroes and proposed the suffrage article of the state constitution. At the close of the convention he was one of the delegates to the national convention that in 1848 nominated Lewis Cass for the presidency. In 1851 Estabrook was a member of the state assembly and in the autumn of that year was nominated and elected on the Democratic ticket attorney-general of Wisconsin. In this office he served from January, 1852 to January, 1854. At the close of this term at the suggestion of Senator Dodge, General Estabrook was appointed attorney-general for the newly-erected territory of Nebraska. He arrived January 1, 1855 at Omaha, where he made his home for the remainder of his life. After being district attorney for four years, General Estabrook served on the governor's staff during the Pawnee War of 1859; he was then chosen territorial delegate to Congress and, in 1866, revisor of Nebraska statutes. At the outbreak of the Civil War he aided in arming and equipping the Omaha "Wide Awakes," and strongly supported the federal government during the war. General Estabrook believed in the future of Omaha and did much to aid its progress as a community, in which he was a conspicuous and popular member of the bar. After his death, which occurred March 26, 1894, his colleagues united in eulogizing his abilities and his character. *Manuscript record.*

GEORGE GALE, son of Peter and Hannah Tottingham Gale, was born November 30, 1816 at Burlington, Vermont. In 1824 the family removed to Waterbury, where George grew up on a farm, having always an extraordinary love of books. In 1839 he was appointed postmaster at Waterbury Center. He

studied law and was in 1841 admitted to the bar. The same year he removed to Wisconsin Territory and began practice at Elkhorn, Walworth County. Young Gale took much interest in the educational and journalistic beginnings of the new territory. He was one of the first school commissioners of the county and secretary of a convention held in 1843 at East Troy to provide common schools and to promote normal school progress in Wisconsin. In 1846 he was owner and editor of Elkhorn's first newspaper, the *Western Star*. He also evinced much interest in temperance reform. In the convention, to which he was elected as a Whig, Gale served on the judiciary committee and was an active though quiet worker. At the close of the convention he was chosen district attorney for his home county. In 1850-1851 he was a member of the second state senate; upon the expiration of his term of office he removed to La Crosse, where he became county judge and in 1857 was elected circuit judge, in which office he served until 1863. Judge Gale had bought in 1853 the land on which Galesville, Trempealeau County, stands; there after 1854 he made his home and founded Galesville University. His work to promote educational and economic progress was recognized by the entire community. During the Civil War he was employed for some months in the Christian and Sanitary Commission work in the South. He died at Galesville, April 18, 1868. Judge Gale's literary, historical, and archeological work gave him a permanent title to fame. He suggested a historical society as early as 1846, was an early member of the State Historical Society, and wrote two unpublished historical sketches, now in manuscript in the Historical Library. His *Wisconsin Form Book* ran through many editions; while his work on the *Upper Mississippi* appeared in 1867. *Wis. Hist. Colls.*, vii, 422-425.

James Harrington, the only member of the convention who was a clergyman by profession, was born in 1810 in Warren County, New York; left an orphan at the age of two, he early learned the trade of carpenter and provided his own livelihood. At the age of sixteen he joined the Methodist Episcopal Church and when about twenty received a license to preach. For the next fourteen years he plied his trade and preached in Lugune and Johnsburg townships of his native county. In 1844 he removed to Wisconsin, and while living at Spring Prairie in Walworth County he was elected as a Democrat to the convention. At the 1848 session of the Wisconsin Methodist Conference, Harrington was received into full membership as a preacher and assigned to the charge at Whitewater. There, finding no church, he went to the woods, cut and hauled the timber, and built most of the church with his own hands. In 1849 volunteers were called for, to establish Methodism on the upper Mississippi. Harrington responded and was sent to Stillwater, Minnesota, where he did good service for a little over a year. In the summer of 1850 he was stricken with cholera and died August 21. *Manuscript record.*

Augustus Caesar Kinne was born at Norwich, Chenango County, New York, December 3, 1808. He grew up on a farm and received an academic education. He taught school for some time and in June, 1838 came to Wisconsin Territory, where he made his home for a few months with Major Meacham at Troy, Walworth County. Later Kinne lived on Sugar Creek

Prairie, then on Heart Prairie. In 1850 he bought a large farm on section one of Sugar Creek Township and there lived until his death January 23, 1863. Kinne belonged to the Democratic party and served as county supervisor, justice of peace, and town superintendent of schools. A quiet man, his work in the convention was solid rather than conspicuous; nevertheless, he helped to lay the foundation for the commonwealth on a broad and equal basis. *Manuscript and printed records.*

HOLLIS LATHAM was a Vermonter, having been born at Northfield, Washington County, March 2, 1812. He was brought up on a farm, with district school opportunities. In 1836 Latham came to Milwaukee, where he arrived July 10; in December of that year he located at Spring Prairie but the following February bought land in Walworth County that is now a part of Elkhorn. There he resided for life. He was a man who inspired great confidence in his neighbors and was chosen to many local offices, which he conducted with great fidelity. He was first coroner of the county, clerk of court for several years, justice of the peace until the close of his life, and superintendent of the poor for a quarter of a century. In the convention he served on the committee on legislative, executive, and administrative provisions. In 1862 he was elected to the assembly. In politics Latham was a Democrat. He was much interested in agricultural development and for twelve years was secretary and for nine years treasurer of the Walworth County Agricultural Society. He died February 22, 1886. *Manuscript and printed records.*

EZRA AMES MULFORD, a native of New York State, where he was born in 1804, was educated as a physician. He came to Wisconsin in territorial days and bought land in Walworth Township, Walworth County, whence he was elected to the convention as a Democrat. He was appointed on the committee on general provisions. Although of a naturally retiring disposition, he was effective in debate. At the time of the convention Dr. Mulford was about forty-three years of age. He lived on his Walworth farm until his death, the date of which is not known. Tenney and Atwood, *Memorial Record*, 245-246.

WASHINGTON COUNTY

JAMES FAGAN was born July 4, either in 1813 or in 1814, in Westmeath County, Ireland. After emigrating to America he settled in Jackson Township of Washington County, where he was supervisor from 1846 to 1849. Fagan represented Washington County as a Democrat in the second constitutional convention, in which he served on the educational committee; he also represented the Cedarburg district in the assemblies of 1849 and 1857. He died at his home in Washington County in February, 1868. *Manuscript record.*

PATRICK PENTONY was born about 1804 in the parish of Dunover, County Meath, Ireland. In 1839 he emigrated to America and settled in Mequon Township of then Washington, now Ozaukee, County. Thence he was nominated and elected on the Democratic ticket to the second constitutional convention.

In this body he took little part save to record his vote. He died July 7, 1876 on his home farm. *Manuscript record.*

HARVEY GRISWOLD TURNER, son of Joseph and Mary Griswold Turner, was the youngest member of the convention, having been born June 7, 1822 at East Oswego, New York, where he received an academic education. He was eighteen years old when his father brought his family to Wisconsin and settled at Waukesha. Young Turner wished to study law and in 1842 entered the office of Finch and Lynde in Milwaukee. Two years later he was admitted to the bar and went to reside at Grafton, Washington (now Ozaukee) County, where he was the first lawyer in the town. Thence he was elected as a Democrat to the convention, wherein he was appointed on the committee on executive, legislative, and administrative provisions. He was later district attorney, judge of Ozaukee County, and member in 1851 of the state senate. In 1860 Judge Turner spent two years in New York. When he returned he took up practice at Port Washington. About 1876 he removed to Manitowoc; thence he removed in 1884 to Milwaukee and formed a partnership with his son, W. J. Turner. There on November 22, 1893 Judge Turner died. *Manuscript and printed records.*

WAUKESHA COUNTY

SQUIRE S. CASE, a native of Hillsdale, Columbia County, New York, was born September 27, 1801. During his boyhood his father removed to what was then the frontier, Chautauqua County, of the same state. There young Case grew up amid the hardships of pioneer life, living on a farm until 1822 when he established the Farmers' Hotel in Buffalo. Thereafter for twenty years he made that place his home, occupied with building and with developing the city. Twice, in 1837 and 1842, he served in the New York Assembly at Albany. In the latter year, having met with financial reverses, Case removed to Wisconsin, taking up land in Merton Township, Waukesha County. He there became interested in railways, and some years after his service in the constitutional convention he aided in securing the right of way for the La Crosse Railway. In 1857 he became its agent at Portage, where he lived until 1868, when increasing age led to his retirement. He thereafter resided in Mauston until his death there on March 30, 1878. Case was sent to the convention from Waukesha County as a Whig. He was a quiet, hard-working, useful member of the convention. He took much interest in the State Historical Society of Wisconsin, to which he was an early donor. Tenney and Atwood, *Memorial Record,* 193-194; *Manuscript record.*

ALFRED LOUIS CASTLEMAN was a Kentucky gentleman of great charm and ability. He was born December 17, 1808 at Shelbyville and educated at the University of Kentucky and at the Louisville Medical School. He practiced first in Indiana, coming thence in October, 1835 to Milwaukee. The next year he settled in Delafield, Waukesha County, where he practiced for several years and in 1842 served as first road commissioner for his township. There he was elected on the Whig ticket to the convention and was a member of the

committee on banks and banking. After that session he began practice in Milwaukee, which was his home for many years. He also lectured at Louisville and received honorary degrees from Indiana and Wisconsin universities. Of the latter he was regent from 1855 to 1861. He was appointed professor of medicine therein; but lack of funds made necessary the abandonment of the chair of medicine. Dr. Castleman was president in 1850, 1851, and 1855 of the State Medical Society. Upon the outbreak of the Civil War he enlisted and was appointed surgeon of the Fifth Wisconsin Volunteers. This regiment was mustered in, in June, 1861 and reached Washington in August of the same year. Dr. Castleman served with great devotion and acceptability and was finally made surgeon general of the brigade. His health, however, became seriously impaired; and because of that and his dissatisfaction with the conduct of the medical department he resigned at the end of 1862. The next year he resumed work as inspector of camps and hospitals in the Army of the Cumberland. After the battle of Chickamauga he returned to Milwaukee and continued his practice. Dr. Castleman wrote a book entitled *The Army of the Potomac behind the Scenes*, which was a severe arraignment of the policy of General McClellan. This exposé attracted much attention at the time of its publication. Therein he commends in the highest terms the voluntary work of the Sanitary Commission. After the Civil War Dr. Castleman's health continued to fail, so that in 1875 he removed to California and settled at San Jose. He died August 22, 1877 at Oakland and was buried at San Jose. *Manuscript record.*

Emulous P. Cotton was a descendant of the Reverend John Cotton of Massachusetts. His father, Owen, came from Vermont to New York in 1804 and settled at Skaneateles in Onondaga County. There he married Hannah Earll, and there their son Emulous was born December 24, 1811. In 1833 the younger Cotton married and in 1842 determined to remove to Wisconsin Territory. In partnership with John S. Rockwell of Milwaukee, Cotton purchased the water power at Oconomowoc and erected grist mills, which he operated until 1855. In 1847 he was elected to the convention as a Democrat and served therein on the committee on schedule and miscellaneous provisions. In 1855 Cotton bought the water power at Roche-a-Cri, Adams County, where he erected sawmills and kept a general store. The panic of 1857 swept away his property, after which he became postmaster of his town, serving in this office for over twenty-two years. In later life Cotton lost his sight and after years of patient endurance he passed away December 18, 1888. He was a man of extensive information, positive convictions, and strict integrity. *Manuscript record.*

Peter D. Gifford was born August 31, 1812 in Northampton Township of Montgomery County, New York. In 1844 he removed to Wisconsin Territory and settled in Eagle Township, Waukesha County, where he was postmaster of Ottawa, chairman of the board of supervisors, and justice of the peace. He likewise represented his district in the territorial legislature and was elected to the convention on the Democratic ticket. He was a useful member of the convention, and a social, kind-hearted neighbor, much esteemed in his com-

munity. About the time Wisconsin attained statehood Gifford built a hotel called "Equality" at North Prairie; in that town he spent the remainder of his life. He was elected to the assemblies of 1851, 1862, and 1866. He died March 15, 1888 at the Mendota State Hospital, where he had been sent for treatment. *Manuscript record.*

ELEAZER ROOT, one of the founders of Wisconsin's educational system, was a native of Canaan, New York, where he was born March 6, 1802. After an academic preparation young Root entered Williams College and graduated at the age of nineteen. He then studied law, and after admission in 1824 to the bar of New York he practiced for some years at Hudson. His health having failed, Root in 1830 went South to recuperate. He had a flourishing seminary for young women in Virginia and later one in Missouri. In 1845 he came to Waukesha and began practicing law. He interested himself in the educational growth of his new home, and was largely influential in founding Carroll College. In the constitutional convention, to which Root was elected as a Whig, he served on the committee on education, drafted the article thereon embodied in the constitution, and spoke effectively in its favor. When the state government was organized Root was chosen without opposition first superintendent of public instruction and reëlected for a second term; it thus fell to his lot to carry out the provisions on education that he had advocated in the convention, and to build the educational system of the state. He was an early regent of the State University, and it was he who persuaded Professor Sterling to come from Waukesha and open the first classes in the University. Root had a plan for coördinating all the educational institutions of the state, which was, however, only in part carried out. At the close of his term of office he removed to Dartford, Marquette County, which he represented in the assembly of 1852. Ill health caused him again to seek a southern climate, and he finally settled in Jacksonville, Florida. There, having taken orders, he became the rector of the Episcopal Church, and there after many years of service he died July 25, 1887. He always retained a deep interest in Wisconsin affairs, especially in all that concerned its educational policy. In 1879 he wrote, "I desire to say, that I have never, anywhere, met with men more intelligent, enterprising, and noble than the early settlers of Wisconsin." *Manuscript and printed records.*

GEORGE SCAGEL JR. was elected as a Democrat to the second contsitutional convention from New Berlin, Waukesha County. He was a brother-in-law of Benjamin Hunkins, who represented the same district in the first convention. Scagel was of English and Scotch ancestry; his parents, George and Sally Pierce Scagel, removed from Maine to Vermont, where at Waterbury the subject of this sketch was born December 29, 1798. Young Scagel grew up on a farm and was always a farmer. While living in Vermont he held the office of captain of the militia and justice of the peace. He removed to Wisconsin in May, 1846. In the convention he served on the committee on general provisions but took no important part in the debates. He died at his home at New Berlin, August 30, 1850. *Manuscript record.*

WINNEBAGO AND MARQUETTE COUNTIES

HARRISON REED, a pioneer journalist of Wisconsin, was a younger brother of George Reed, delegate to the first constitutional convention. Their parents were Seth and Rhoda Reed, and Harrison was born August 26, 1813 at Littlefield, Middlesex County, Massachusetts; in infancy he removed to Westford in the same state, and in 1823 to Castleton, Vermont. There the boy grew up, learning the printer's trade and securing a fair education. Some time in the early thirties the Reeds moved to Troy, New York, where Harrison cast his first vote for Henry Clay. In 1836 Reed came with his brothers to Milwaukee, and there next year he was pressed into service to issue the *Sentinel*, whose editor and publisher had died. For almost five years, Reed performed all the work of typesetting, editing, and publishing the little weekly, to which he gave a somewhat Whiggish tone, although politics in Wisconsin were then more personal than political. In 1841 an opposing element secured possession of the *Sentinel*, and Reed sought Madison, where for a short time he published the *Enquirer*. In 1843 he bought from the government the Indian reservation at Winnebago Rapids and was the first settler and virtual founder of the town of Neenah. The next year he was postmaster and chairman of the county board of supervisors. In 1847 he contested the seat for the convention with Satterlee Clark, and entered that body as Whig delegate from Marquette and Winnebago counties. He was a member of the committee on general provisions, was ready in debate, and had much influence with his associates. In 1848 he was a presidential elector on the Taylor ticket. Reed was one of the founders of the Republican party in Wisconsin; in 1856 he began the publication of the Neenah *Conservator* and issued it for two years, when he sold it to Menasha parties. In 1859 he returned to Madison and from June 1 of that year until June 1, 1861 was in partnership with David Atwood and Horace Rublee as editors of the *Wisconsin State Journal*. In 1862 President Lincoln requested Reed to go to Florida and aid the efforts of the federal government to get control of that state. He did so, and thereafter made Florida his home and was governor thereof from 1868 to 1873 and a member of its assembly in 1878. He died at South Jacksonville, May 25, 1899. *Manuscript and printed records.*

SUMMARY OF STATISTICS

FOR THE

SECOND CONSTITUTIONAL CONVENTION

Politically this convention had forty-one Democrats, twenty-five Whigs, and three Independents. Twenty-six of the sixty-nine members were natives of New England and twenty-five of New York State. Most of the latter were of New England antecedents. Of the New Englanders the largest groups represented Connecticut and Vermont, nine and seven respectively. One was from New Jersey, two (of Irish parentage) from Pennsylvania. The southern states were represented by six members: four from Kentucky, one each from Maryland and Virginia. Ohio furnished two, one belonging to the southern frontier type, one to the northeastern. From Europe there were five Irish, one German, and one Norwegian. Occupationally thirty-one described themselves as farmers, and two as physicians and farmers. Some of the other professional men operated farms, which made agriculture the dominant interest. The lawyers numbered nineteen. There were two physicians, two editors, one geologist, and one clergyman (who wrote himself down as carpenter). There were five merchants, two millwrights, one carpenter, and one lumberman. No member described himself as miner, but one or two well-known mining operators wrote themselves down as farmers. One, who entered himself as "constitution maker," was a farmer and tavern keeper; a Milwaukeean who entered himself as civil engineer might also have written "capitalist." In age, twelve had not reached their thirtieth birthday, and thirty-two were between thirty and forty. Only two were over fifty. Three had arrived in Wisconsin since the holding of the former convention; thirty-six had lived in the territory five years or less, and twenty-one more than seven years. The oldest residents were Martin of Green Bay, Rountree and Ramsey of the lead region. All three had lived twenty years in the regions they represented. Fowler, Kilbourn, and Castleman had been at Milwaukee since its beginnings. Biggs, Hollenbeck, and Dunn of the southwest came in with the territory or before.

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